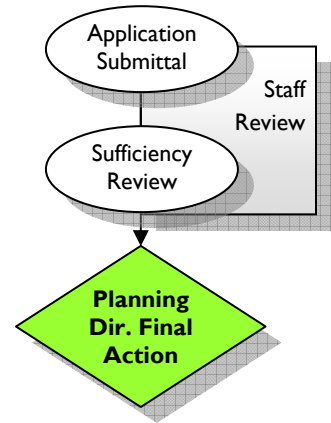


Article 3 | Applications and Permits

Sec. 3.1 Interpretation of this Ordinance

3.1.1 Applicability

- A. When uncertainty exists, the Planning Director or designee shall be authorized to make all interpretations concerning the provisions of this Ordinance with the exception of the sections listed below:
- B. Sections Excepted
- Sec. 12.3.1, the Public Works Director or designee, shall be authorized to make all interpretations concerning the provisions of this section.
 - Sec. 12.8, the Public Works Director or County Engineer or designees, as appropriate, shall be authorized to make all interpretations concerning the provisions of this section.
 - Sec. 12.10, the County Engineer or designee, shall be authorized to make all interpretations concerning the provisions of this section.
 - All interpretations of matters relating to the North Carolina Building Code shall be made by the Inspections Director or designee.
 - The Planning Director may defer interpretations of additional sections of this Ordinance to appropriate City and/or County officials.



3.1.2 Application Requirements

A request for interpretation shall be submitted in writing.

3.1.3 Action by Planning Director

- A. The Planning Director shall:
- Review and evaluate the request in light of the text of this UDO, the Official Zoning Map, the Comprehensive Plan and any other relevant information;
 - Consult with the Inspections Director or designee and coordinate with other staff, including the City or County Attorney, as necessary; and
 - Render an opinion.
- B. The interpretation shall be provided to the applicant in writing.

3.1.4 Official Record

The Planning Director or designee shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours.

3.1.5 Appeal

Final action on an official interpretation of this Ordinance by the Planning Director or designee may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Ordinance Interpretations

~~Any requirement, decision, or determination pertaining to this ordinance made by any administrative official may be appealed to the Board of Adjustment. The appeal may be made by the aggrieved party or an agent for the aggrieved party.~~

Zoning Boundary Interpretations

~~When uncertainty exists regarding the precise location of boundaries of zoning districts, an appeal may be made to the Board of Adjustment for a determination of the exact location.~~

~~Requests for interpretation may be made to the Board of Adjustment by any interested party.~~

Ordinance Interpretation Procedure

~~In the case of an ordinance interpretation application, the Board of Adjustment may reverse, affirm or modify the decision of an administrative official by a 4/5ths vote. In the event that the Board of Adjustment reverses or modifies the decisions of an administrative official, all similar and subsequent actions by the administrative officials shall be in accordance with the decision.~~

~~Records shall be kept of all interpretational decisions.~~

District Boundary Interpretation Procedure

~~In case of a dispute in the location of a district boundary, the Board of Adjustment may determine the exact location of the boundary. Records shall be kept of the interpretation and the action shall be noted on the Official Zoning Map.~~

Sec. 3.2 Common Review Procedures

3.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

- A. Comprehensive Plan Amendment
- B. Zoning Map Change
- C. Subdivision Review
- D. Site Plan Review
- E. Special Use Permit
- F. Sign Permit
- G. Temporary Use Permit
- H. Home Occupation Permit
- I. Administrative Adjustment
- J. Variance
- K. Appeal of Administrative Decision
- L. Historic District/Landmark Designation
- M. Certificate of Appropriateness
- N. UDO Text Amendment
- O. Statutory Vested Rights Determination

3.2.2 Pre-Application Conference

- A. Before submitting an application for development approval, it is recommended that each applicant schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards and regulations required for development approval in accordance with of this Ordinance.
- B. A pre-application conference with the Planning Director or designee shall be required for the following development review:
 - 1. Amendments to the Comprehensive Plan;
 - 2. Applications for minor and major special use permits; and
 - 3. Applications for zoning map change.
- C. A mandatory pre-application conference with the Public Works Director, or designee shall be required for the following development review:
 - 1. Traffic Impact Analysis; and
 - 2. Traffic Impact Analysis Major Special Use Permit.

3.2.3 Neighborhood Meeting

- A. All applicants shall hold a neighborhood meeting prior to submitting an application, but after a pre-application conference, for the following development review:
1. Amendments to the Comprehensive Plan; and
 2. Zoning map changes that require a TIA pursuant to Sec. 3.3; and
 3. Other applications as may be specified elsewhere in this Ordinance.
- B. The purpose of the neighborhood meeting shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments. This requirement shall not mean that all association members, owners or tenants are required to attend such a meeting.
- C. The applicant shall provide notice by mail at least ten days prior to the date of the neighborhood meeting to each owner of record of any land within 600 feet of the property for which the development approvals are sought and to neighborhood associations located within 1,000 feet of the site which have registered with the Planning Department to receive notice. The notice shall include at a minimum the following:
1. The applicant's name and telephone number;
 2. The street address of the site with a small identification map;
 3. A clear explanation of what the applicant is proposing; and
 4. The date, time and location of the meeting.
- D. The Planning Director or designee may develop administrative regulations setting forth guidelines pertaining to any additional requirements for the conduct of the meeting.
- E. Such guidelines shall be subject to review by the joint City/County Planning Committee.

~~The application form describes the information required. A completed application consists of the application form, the required plans, and the information specified on the application. The applications shall be reviewed for completeness by the Planning Department.~~

3.2.4 Application Requirements

The following requirements shall apply to all applications for development approval identified in Sec. 3.2.1.

A. Forms

~~Application forms are shall be available from the City County Planning Department. Applications required under this Ordinance shall be submitted on forms and in such numbers as required by the appropriate department. All forms shall include, at a minimum, the following information:~~

1. Contact information for the individual or firm submitting the application.
2. Contact information for the individual or firm on whose behalf the application is being submitted.
3. Identification of the property affected by the application, such as a legal description, address, or PIN as may be appropriate.

- 1 4. Any other information required by the Planning Director or the provisions of
2 this Ordinance.

3 **B. Fees**

- 4 1. All applications and associated fees shall be filed with the Planning Director
5 appropriate department.
6 2. Filing fees shall be established from time to time to defray the actual cost of
7 processing the application.
8 3. An applicant who has paid the appropriate fee pursuant to the submission of an
9 application, but who chooses to withdraw such application prior to its
10 distribution for review shall be entitled to a refund of the total amount paid, less
11 ten percent for administrative costs, upon written request to the appropriate
12 department. Once review has begun, no refund shall be available, except that
13 unused notice surcharges shall be refunded less ten percent for administrative
14 purposes. No refund of technology surcharges shall be provided.

15 **C. Applications Sufficient for Processing**

- 16 1. All applications shall be sufficient for processing before the appropriate
17 department is required to review the application.
18 2. The presumption shall be that all of the information required in the application
19 forms is necessary to satisfy the requirements of this section. However, it shall
20 be recognized that each application is unique, and therefore more or less
21 information may be required according to the needs of the particular case. The
22 applicant may rely on the recommendations of the appropriate department as
23 to whether more or less information should be submitted.
24 3. Once the application has been determined sufficient for processing, copies of
25 the application shall be referred by the appropriate department to the
26 appropriate government departments reviewing entities for review. In cases
27 where the applicant chooses to proceed with an application determined to be
28 insufficient, the application may proceed with a recommendation of denial from
29 staff.
30 4. The Planning Director, or designee, may require an applicant to present
31 evidence of authority to submit the application.

32 **D. Application Deadline**

33 Applications sufficient for processing shall be submitted to the Planning Director or
34 designee in accordance with the published calendar schedule. Schedules indicating
35 submittal dates shall be developed each year and made available to the public.

36 **E. Staff Consultation after Application Submitted**

- 37 1. Upon receipt of an application sufficient for processing, the Planning Director
38 or designee shall review the application and confer with the applicant to ensure
39 an understanding of the applicable requirements of this Ordinance; that the
40 applicant has submitted all of the information they intend to submit; and that
41 the application represents precisely and completely what the applicant proposes
42 to do.
43 2. Once the applicant indicates that the application is as complete as the applicant
44 intends to make it, the application shall be placed on the agenda of the
45 appropriate reviewing board or committee in accordance with standard

procedures. However, if the Planning Director or designee believes the application is incomplete, a recommendation to deny the application on that basis shall be provided to the appropriate board or committee.

F. Simultaneous Applications

1. Applications for development approvals may be filed and reviewed simultaneously, at the option of the applicant. Any application that also requires a variance shall not be eligible for final approval until the variance has been granted.
2. Applications submitted simultaneously are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

3.2.5 Notice and Public Hearings

A. Summary of Notice Required

Notice shall be required for applications for development approval as shown in the table below.

| Procedure | Published | Mailed | Posted |
|---|-----------|--------|--------|
| Comprehensive Plan Amendment | ✓ | ✓ | |
| Zoning Map Change | ✓ | ✓ | ✓ |
| Minor Special Use Permit | ✓ | ✓ | ✓ |
| Major Special Use Permit (including TIA special use permit) | ✓ | ✓ | ✓ |
| Variance | ✓ | ✓ | ✓ |
| Appeal of Administrative Decision | ✓ | ✓ | |
| Historic Landmark Designation and Certificate of Appropriateness | ✓ | ✓ | |
| UDO Text Amendment | ✓ | | |
| Vested Rights Determination | ✓ | ✓ | ✓ |
| Rectification of Plans | ✓ | | |

B. Public Notice Requirements

1. Published Notice

A distinctive advertisement shall be placed by the Planning Department in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.

2. Mailed Notice

- a. The Planning Director, or designee, shall notify by first class mail all property owners within the applicable notification distance from the property under consideration as specified in the table below:

| Procedure | Notification Distance (ft) |
|--|---|
| Comprehensive Plan Amendment | 1,000 |
| Zoning Map Change | 600 |
| Initial Zoning | 100 |
| Board of Adjustment Hearings | 300 |
| Major Special Use Permit | 600 |
| Historic Landmark Designation and Certificate of Appropriateness | All adjacent properties* |
| Vested Rights Determination | Subject property and all adjacent properties* |

*adjacent properties shall include properties directly across the street from the subject property (where applicable)

- b. For amendments to the Comprehensive Plan, Zoning Map Changes, and Major Special Use Permits, mailed notice shall also be provided to any organization located within 1,000 feet of the site under consideration which is registered to receive notice pursuant to Sec. 3.2.5D.
- c. For UDO Text Amendments, mailed notice shall be provided to any organization which is registered to receive such notice pursuant to Sec 3.2.5D.
- d. The notice shall be mailed at least ten but not more than 25 days prior the date of the public hearing.
- e. Mailed notice under this section shall not be required if a zoning map change directly affects more than 50 properties owned by a total of at least 50 different property owners, and the Planning Director or designee elects to use the following expanded published notice requirements:
 - (1) A distinctive advertisement may be placed once a week for four successive calendar weeks in a local newspaper of general circulation. The advertisement shall not be less than one-half of a newspaper page in size.
 - (2) In addition to the published notice, the Planning Director or designee shall post a sign in accordance with Sec. 3.2.5B.3 and Sec 3.2.5B.4.c.
 - (3) Mailed notice shall be provided by first class mail to property owners who reside outside of the newspaper's circulation area.

3. Posted Notice (Sign)

A sign noticing the public hearing shall be posted by the Planning Director, or designee, not less than 10 days prior to the public hearing at which the application shall be reviewed. The sign shall be posted on the property or at a point visible from the nearest public street.

4. Content of Notice

For all applications for development approval except UDO text amendments, the notices listed above shall contain the following specific information.

a. Published or Mailed Notice

A published or mailed notice shall provide at least the following:

- (1) Parcel Identification Number;
- (2) The address of the subject property (if available);
- (3) The general location of the land that is the subject of the application, which may include, a location map;
- (4) A description of the action requested;
- (5) Where a zoning map change or a Comprehensive Plan amendment is proposed, the current and proposed districts;
- (6) The time, date and location of the public hearing;
- (7) A phone number to contact the Planning Director or designee;
- (8) A statement that interested parties may appear at the public hearing; and
- (9) A statement that substantial changes to the proposed action may be made following the public hearing.

b. Published Notice for UDO Text Amendments

A published notice shall include the following specific information:

- (1) A summary description of the proposed change;
- (2) The time, date and location of the public hearing;
- (3) A phone number to contact the Planning Director or designee;
- (4) A statement that interested parties may appear at the public hearing; and
- (5) A statement that substantial changes to the proposed action may be made following the public hearing.

c. Posted Notice

Required posted notices shall indicate the following:

- (1) A case number;
- (2) Type of action; and
- (3) A phone number to contact the Planning Director, or designee.

C. Constructive Notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

D. Registration to Receive Notice by Mail

Immediately following adoption of these regulations, and every two years thereafter, any organization may pay an appropriate fee and register with the Planning Director or designee to receive written notice of all applications for development approval requiring mailed notice. To be eligible for registration, the applicant must provide the Planning Director or designee information in the form required by the Planning Director or designee to ensure notification can be made to the organization. All organizations must re-register every two years thereafter.

E. Required Hearing

- 1.** A legislative public hearing or a quasi-judicial hearing shall be required for development review as shown in the table below.

| Applications for Approval | Board of Adjustment | Planning Commission | Governing Body |
|---|---------------------|---------------------|----------------|
| Transportation Special Use Permit | | | ✓(1) |
| Comprehensive Plan Adoption/Amendment | | ✓ | ✓ |
| Zoning Map Change | | ✓ | ✓ |
| Minor Special Use Permit | ✓(1) | | |
| Major Special Use Permit | | | ✓(1) |
| Variance | ✓(1) | | |
| Appeal of Administrative Decision | ✓(1) | | |
| Historic District /Landmark Designation | | ✓(2) | ✓ |
| UDO Text Amendment | | ✓ | ✓ |
| Vested Rights Determination | | | ✓ |

(1) Requires a quasi-judicial hearing

(2) HPC shall also hold a public hearing

- 2.** The day of the public hearing shall be considered the day the hearing is originally advertised for, unless a deferral is granted by the Governing Body upon a request that follows the procedures set forth in this Ordinance regarding timely submission of requests for deferrals.

~~Required public hearings to consider the application shall be scheduled by the Planning Department. Public hearing notifications shall be made in accordance with NCCS 160A-364 and 384 and NCCS 153A-323 and 343.~~

3.2.6 Notice of Decision

Within seven days after a decision is made, a copy of the decision shall be sent to the applicant and filed in the Planning Department, where it shall be available for public inspection during regular office hours.

Sec. 3.3 Traffic Impact Analysis (TIA)

3.3.1 Applicability

Unless exempted below, a traffic impact analysis (TIA) shall be required for zoning map changes utilizing a development plan, site plans, and preliminary plats that can be anticipated to generate at least 150 vehicle trips at peak hour. Trips generated by separate developments meeting the criteria of 3.3.3, TIA Submission for Projects with Cumulative Impacts, shall be considered cumulatively.

3.3.2 Exemptions

The following projects shall not be required to submit a TIA:

- A. Projects located within the Downtown Tier.
- B. Developments that submitted a TIA in conjunction with a zoning map change or previously approved site plan, special use permit, or other plan, where the TIA is less than five years old;
- C. Redevelopment of any site on which the increase in traffic at peak hour represents an increase of less than 150 trips from the previous development, if the redevelopment is initiated within 12 months of the cessation of use of the previous development so long as no access road that leads directly to the site is operating at a level of service worse than the jurisdiction's adopted level of service.

3.3.3 TIA Submission for Projects with Cumulative Impacts

A. Unified, Phased, or Otherwise Aggregated Developments

An applicant shall be required to submit a TIA, or obtain a major special use permit as hereafter provided, for a development plan, site plan, preliminary plat, special use permit, or other similar plan that does not otherwise meet the thresholds for submission of a TIA or for obtaining a major special use permit if the development approval is for a project that:

- 1. Shares features such as site access or other roadways, design elements, or other infrastructure with nearby unbuilt, but reasonably foreseeable developments; and,
- 2. When complete, will function in conjunction with such nearby developments as a single project, the impact on the infrastructure of which would exceed the thresholds for preparation of a TIA.

B. Determination

The Public Works Director, or designee shall determine whether a development application meets the criteria in A, above, and shall determine whether one TIA shall be required for all of the aggregated development, or whether multiple TIAs may be employed for separate phases of the development.

3.3.4 Pre-Application Conference

The applicant shall schedule a pre-application meeting with the Public Works Director or designee to discuss procedures, standards, and regulations required for TIA submittal and approval.

3.3.5 Requirements

A. Content

The Public Works Director or designee shall set forth specific guidelines for preparation of TIAs. A TIA shall, at a minimum, provide the following information:

1. An estimate of the traffic generated as a result of the proposed development;
2. An analysis of the existing street system serving the proposed development; and
3. An assessment of the improvements needed to the existing street system in order to support the traffic anticipated to be generated by the proposed development.

B. Preparer

A TIA shall be prepared by a registered professional engineer with experience in traffic engineering.

C. Sources of Data

Estimates of vehicle trips shall be calculated based on trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers, unless an alternative source of information is approved by the Public Works Director or the NCDOT.

3.3.6 Period of Validity

A TIA shall be valid for a specific site for no more than eight years, so long as no significant modifications to the development proposed for the site that substantially increase the traffic impact are made. A TIA submitted in connection with a project that is accessed by a road that is operating at a level of service lower than the jurisdiction's adopted level of service shall be valid for no more than five years, however.

3.3.7 Coordination with Zoning Map Changes, Site Plans, and Preliminary Plats

Transportation mitigation measures may be required to address issues raised by a TIA, or as part of the approval of a TIA Major Special Use Permit. Such measures may include, but not be limited to, onsite and offsite improvements related to reduction of traffic impact on the surrounding road system, pedestrian movement, and the environment. These measures shall be conditions of development approval. Deletion or modification of these conditions shall require the same approval process that was required for the original project, unless the approved mitigation measure is deemed to conflict with NCDOT or Public Works requirements, in which case they may be deleted or modified by the Development Review Board.

3.3.8 Transportation Special Use Permit (TSUP)

A. Requirements

A Transportation Special Use Permit shall be required for site plans and preliminary plats that are expected to generate:

1. 600 or more vehicle trips at peak hour; or

2. 300 or more vehicle trips at peak hour, if any road serving the project is operating at a level of service lower than the jurisdiction's adopted level of service.

B. Exemptions

The following projects shall be exempt from the requirement for a TSUP, even if they meet or exceed the thresholds specified above.

1. Projects utilizing either the UC or SRP zoning district.
2. Projects located within the Downtown Tier.
3. Projects which have submitted a TIA in connection with a zoning map change, and which are developing consistent with the approved development plan, if the TIA is valid pursuant to Sec. 3.3.6, above.

C. Process

Projects requiring a TSUP shall be processed in accordance with the provisions of Sec. 3.9, Special Use Permit.

D. Criteria for Approval

In order to approve a TSUP; the governing body shall make the following findings:

1. The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impact shall include:
 - a. Substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or
 - b. The need to widen local residential streets which would detract significantly from the character or basic function of a nearby street.
2. Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.
3. The traffic generated by the proposed development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impacts shall include but not be limited to undue concentration of air pollutants, or excessive noise or vibrations.
4. The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed as part of the development application. Proposed mitigation measures shall become conditions of the special use permit. The adopted level of service for the adjacent roadways may be considered in making this determination but shall not be the sole factor considered by the governing body.

Sec. 3.4 Comprehensive Plan Adoption/Amendment

3.4.1 Applicability

- A. The governing bodies shall consider adoption of or amendments to the Comprehensive Plan, as may be required from time to time.
- B. The governing bodies shall also consider adoption of or amendments to the Comprehensive Plan when zoning map change proposals are in significant conflict with the Plan, as determined by the Planning Director or designee.
- C. Adoption of or amendments to the Comprehensive Plan shall only apply to the jurisdiction in which the subject property is located unless the property is the subject of an annexation petition; or through the rectification process established in Sec. 3.4.10.

3.4.2 Coordination with Applications for Zoning Map Change

When required, an application for a plan amendment shall be submitted and reviewed concurrently with a zoning map change application. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting; however, decisions shall be rendered with separate motions.

3.4.3 Pre-Application Conference

All applicants applying for a plan amendment shall schedule a pre-application conference with the Planning Director or designee in accordance with Sec. 3.2.2.

3.4.4 Neighborhood Meeting

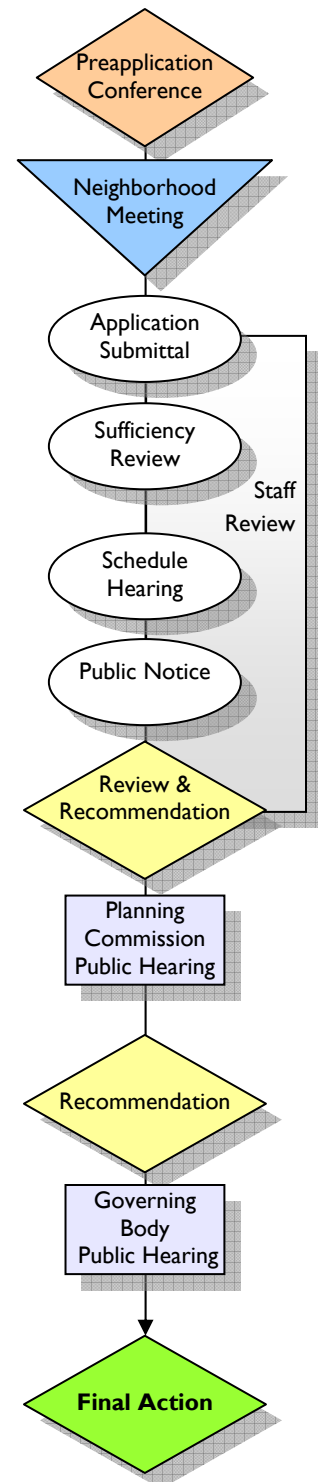
All applicants applying for a plan amendment shall hold a neighborhood meeting in accordance with Sec.3.2.3.

3.4.5 Application Requirements

An application for a plan amendment shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.4.6 Action by the Planning Commission

- A. Before making any recommendation on a plan amendment, the Planning Commission shall consider any recommendations from the Planning Director or designee, and shall conduct a public hearing, which may be combined with other requested plan amendments, or with the rezoning request related to the plan amendment.
- B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5.



1 C. It is expected that the applicant or a representative of the applicant will appear at the
2 meetings to explain why the ~~land use~~ Comprehensive Plan should be changed.
3 ~~The Planning Director may include an analysis of the proposed plan amendment in the analysis~~
4 ~~of the rezoning request. A recommendation regarding the plan amendment may be delayed~~
5 ~~until after the public hearing.~~

6 D. Following the public hearing, the Planning Commission shall make a
7 recommendation on the application to the governing body.

8 E. The Planning Commission shall make its recommendation within 60 days of its
9 initial public hearing.

10 3.4.7 Criteria for Planning Commission Recommendations

11 The recommendations of the Planning Commission to the governing body shall show
12 that the Planning Commission has studied and considered the proposed change in
13 relation to the following, where applicable:

14 A. Whether the proposed change would be consistent with the intent, goals, objectives,
15 policies, guiding principles and programs of any adopted plans;

16 B. Whether the proposed change would be compatible with the existing land use pattern
17 and designated future land uses;

18 C. Whether the proposed change would create substantial adverse impacts in the
19 adjacent area or the City or County in general; and

20 D. Whether the subject parcel is of adequate shape and size to accommodate the
21 proposed change.

22 3.4.8 Modification of Tier Boundary

23 Where a zoning map change involves modification of the Tiers established in the
24 Comprehensive Plan, the following criteria shall be considered.

25 1. The site is contiguous to the proposed Tier;

26 2. The site is not in the drainage basin for Lake Michie or Little River or in the
27 one-mile critical area around Jordan or Falls Reservoirs;

28 3. The extension does not violate any agreements with neighboring jurisdictions;
29 and

30 4. If the proposal is to expand the Suburban Tier, extending utilities to serve the
31 site is determined to be technically feasible by the Public Works Director or
32 designee and will not result inordinate cost to the City.

33 3.4.9 Action by the Governing Body

34 A. Before taking action on a plan amendment, the governing body shall consider the
35 recommendations of the Planning Commission and Planning Director, and shall
36 conduct a public hearing.

37 B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5.

38 C. It is expected that the applicant or a representative of the applicant will appear at the
39 meetings to explain why the land use plan should be changed.

- D. Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Commission for additional consideration.
- E. An approval shall be by written resolution. The approval may be contingent upon conditions specified by the governing body. The effective date may be immediate or may be a date otherwise specified in the approval.

3.4.10 Rectification ~~Coordination of~~ County and City Land Use Plans

Annually, the Planning staff will conduct a public ~~meeting~~ hearing before each governing body for the purpose of addressing and possibly rectifying any differences between the adopted land-use plans of the City and County. There ~~will~~ shall be public notification of the ~~meeting/hearing in accordance with Sec. 3.2.5B.1,~~ and public participation ~~will~~ shall be allowed. ~~The JCCPC shall be informed of the results of governing body consideration of plan amendments.~~

City Jurisdiction

The Durham Planning Commission and the City Council will consider amendments to adopted land-use plans such as small area plans, the 2020 plan, and the 54/40 Corridor Plan when rezoning proposals are determined by the Durham City/County Planning Department to be in significant conflict with such plans. Amendments to such plans will be considered every 3 months in accordance with a schedule published annually by the Planning Department.

Applications must be filed with the Planning Department no later than 45 days before the scheduled meeting of the Planning Commission and be accompanied by the appropriate fee.

County Jurisdiction

~~The Governing Bodies and the Durham Planning Commission will consider amendments to the Land Use Plans every 3 months in accordance with a schedule published annually by the Planning Department. Applications must be filed with the Planning Department no later than 45 days before the scheduled meeting of the Planning Commission and be accompanied by the appropriate fee.~~ Approval Process

City Jurisdiction

The proposed plan amendment and rezoning request will be presented at a regularly scheduled quarterly meeting of the Durham Planning Commission. A public hearing on the plan amendment shall be held.

Plan amendments considered by the City Council shall be voted on after a public hearing, which may be combined with other plan amendments or with the public hearing on the related rezoning request.

Property owners within the area, and within 600 feet of the boundary of the change will be notified, in addition to neighborhood associations within 1 mile of the proposed change. The applicant shall notify property owners and neighborhood associations of a proposed plan amendment when the notifications regarding the zoning hearing before the Planning Commission and City Council are sent. The applicant shall provide the Planning staff with a certificate of mailing, or, if hand delivered, with the signature of the person receiving the notice. The Planning Department will place an advertisement in a local newspaper.

At any public hearing regarding a plan amendment, the applicant will make a presentation and give the reasons for the request. Interested persons will also be allowed to speak. Speakers may be limited to a maximum speaking time, depending on the number of individuals giving testimony. Groups are requested to select a spokesperson for the group.

County Jurisdiction

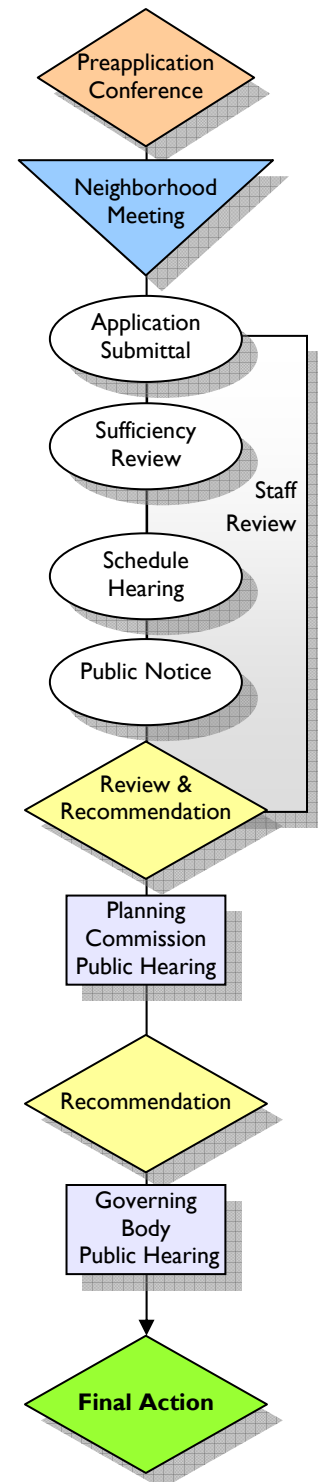
The proposed Plan amendment and rezoning request will be presented at a regularly scheduled Quarterly Meeting of the Durham Planning Commission [Both the Zoning Committee and Planning Committee attend the Quarterly meetings]. A decision will normally be taken on the

1 same day as the meeting and then referred to the appropriate governing body for a final
2 decision. The JCCPC will be informed of the actions.
3 The Planning Department rezoning staff will include the proposed amendment in the analysis of
4 the rezoning request. A recommendation may be made with the report or may be delayed until
5 after hearing the public testimony.
6 Prior to the consideration of the amendment by the Planning Commission, the applicant will
7 notify all property owners within the area to be changed and within 600 feet of the boundary of
8 the change, will be informed of the proposed amendment. All neighborhood associations within
9 1 mile of the proposed amendment will also be notified. The applicant shall provide the Planning
10 staff with a Certificate of Mailing from the Post Office or, if hand delivered, the signature of the
11 property owner receiving the notice. The Planning staff will place an advertisement in a local
12 newspaper. Similar notification procedures are required prior to the consideration of the
13 amendment by the governing body.
14 At the meeting, the applicant will make a presentation and give the reasons for the request.
15 Interested persons will also be allowed to speak. Speakers may be limited to a maximum
16 speaking time, depending on the number of individuals giving testimony. Groups are requested
17 to select a spokesperson for the group. Staff will follow with a brief summary of the staff report
18 and a recommendation.
19 Effective Date
20 Plan amendment approval by the governing body may be contingent upon conditions specified
21 by the approving body. The effective date may be immediate or may be a date otherwise
22 specified in the approval.
23

Sec. 3.5 Zoning Map Change

3.5.1 Applicability

- A. A zoning map change rezoning is a procedure to process amendments to the zoning district boundaries of the Official Zoning Map. ~~Text changes may also be made to the text of the adopted zoning ordinance. Both procedures are referred to as "amendments" in this Section.~~
- B. A zoning map change map amendment may be initiated by the governing body, the Planning Commission, the Board of Adjustment, the Planning Director or designee, a citizen or the property owner or their agent, except that a petition for a zoning map change with a development plan may only be initiated by the property owner or their agent.
- C. The development plan (See Sec. 3.5.6) procedure is established so that property owners or their agents may provide more information than would typically be found with just a zoning map change rezoning petition. The purposes of the development plan are set forth in Sec. 3.5.6. below. The development plan establishes the maximum development that will be allowed on the property. Subsequent site plans or plats shall not exceed those maximums, unless a change is considered to be a minor change as described further in this Ordinance. Plans subsequently submitted that deviate from an approved development plan may require a zoning map change, as established in sec. 3.5.12, below. A development plan is not a site specific development plan that results in vested rights, and does not give a right to develop pursuant to the plan, in the absence of subsequent approved site plans or preliminary plats or a determination of statutory vested rights as otherwise allowed in this Ordinance.
- ~~The development plan is provided to assure compatibility with adjacent uses, to assure design flexibility, to promote efficient use of the land, and to protect the environment.~~
- D. The development plan may be used by the petitioner in any zoning district; however, the development plan shall be required in the PDR, CC, MU, and IL districts and in the RS-M district if the applicant proposes to develop a building greater than 35 feet in height or proposes a density greater than eight units per acre. A development plan shall be required for additions to the UC District after the initial zoning map change establishing the District on each campus. Development plans may also be required as otherwise set forth in this Ordinance. The development plan shall become a part of the zoning map change rezoning petition and shall be reviewed concurrently with the zoning map change rezoning petition.
- E. A traffic impact analysis may be required if the proposed zoning map change meets the threshold requirements established in Sec. 3.3, Traffic Impact Analysis.



~~A major special use permit shall be required of development projects and site plans for which a traffic impact analysis (TIA) is required in Sec. 0 and which are projected to generate: The initial zoning of property in Durham County that has been annexed to the City, where the proposed zoning is the same as it was in Durham County, shall not require a Commission hearing or recommendation.~~

3.5.2 Pre-Application Conference

All applicants petitioning for a zoning map change shall schedule a pre-application conference with the Planning Director or designee in accordance with Sec. 3.2.2.

3.5.3 Neighborhood Meeting

An applicant petitioning for a zoning map change shall hold a neighborhood meeting as set forth in Sec. 3.2.3.

3.5.4 Coordination with the Comprehensive Plan

- A. All petitions for zoning map change shall be consistent with the Comprehensive Plan. A petition for zoning map change shall not be approved by the governing body when there is a significant conflict with the Comprehensive Plan, as determined by the Planning Director or designee (see Sec. 3.4, Comprehensive Plan Amendment).
- B. When required, an application for a plan amendment shall be submitted concurrently with an application for zoning map change. The decisions, however, shall be rendered with separate motions.

3.5.5 Application Requirements

- A. An application for zoning map change shall be submitted in accordance with Sec. 3.2.4, Application Requirements.
- B. Zoning map changes Rezoning must should correspond with the boundary lines of existing platted lots or tracts. If the boundaries of a zoning map change rezoning request stop short of an exterior property line, that portion of the property outside the proposed zoning map change boundary shall be capable of being subdivided and developed in accordance with the existing zoning and other requirements of this Ordinance.

City Jurisdiction

~~If they do not, approval of a subdivision plat showing boundaries corresponding to the rezoning must be requested. All lots created by such plat must be useable. If not approved prior to a rezoning, the necessary subdivision shall be requested after a rezoning. Final plat approval of such subdivision shall be considered a condition of approval of any rezoning in cases where the zoning boundaries do not follow existing platted lot lines. Replatting is not required for off site property being used to meet zoning requirements and included within a rezoning.~~

County Jurisdiction

~~If the boundaries of a rezoning request stop short of an exterior property line, that portion of the property outside the with the existing zoning and other requirements of this ordinance.~~

- C. All zoning requirements must shall be capable of being met within the boundaries of the area being proposed for change rezoned, unless the area being changed is utilizing a development plan and is an addition to an existing area zoned with a development plan. If they cannot all of the requirements cannot be met on the site being changed, the zoning map change rezoning must shall be expanded to include necessary property being used to meet zoning requirements. Projects utilizing a

development plan may be expanded without meeting this criteria if, considering the original development plan area, the requirement can be met without violating any committed elements. Projects utilizing this provision shall provide graphics and/or a chart demonstrating how the requirements are met.

- D. If the boundaries of a zoning map change rezoning request in process are modified so as to 1) remove property from the request, and 2) have the effect of separating other adjoining properties from the boundaries of the modified request, that change ~~will~~ shall be considered a substantial change from the original request and shall result in the modified request being considered a new zoning map change rezoning request and requiring resubmittal with a new application and applicable fees.

~~The application for the MU district with the Development Plan and Phasing Plan shall be processed in a manner identical to other zoning map amendment requests.~~

3.5.6 Development Plan

- A. A development plan is intended to:

1. Demonstrate compliance with Ordinance requirements;
2. Specify the maximum scale and intensity of the proposed development;
3. Demonstrate that the implications of all Ordinance requirements have been considered;
4. Provide appropriate protections for sensitive areas;
5. Identify limitations on uses, where appropriate;
6. Commit to dedications prior to site plan or plat review;
7. Identify additional design specifications, where required or committed as part of the development plan;
8. Identify the timing and sequencing of phases or uses of projects, where required or committed as part of a development plan;
9. Identify commitments that are greater than Ordinance requirements (committed elements); and
10. Provide information sufficient to demonstrate that the proposed project can be developed as proposed.

- B. Where the applicant has elected to use the development plan, the letter “D” shall follow the proposed zoning district designation. If approved, the letter “D” shall remain as a part of the zoning designation of the property , and the specifications submitted as part of the development plan shall establish the general level of development permitted on the property absent further zoning action.

- C. Development Plan Requirements

1. Development plans shall only be prepared by a Professional Engineer, Professional Architect, or Registered Landscape Architect, who shall sign and seal the plans appropriately to attest that the plans fully comply with all Ordinance requirements.
2. Development plans shall only be filed for zoning map changes when the owner(s) of the property have specifically agreed to such plan being filed for the property by acknowledging their agreement in writing.

3. Development plans shall, at a minimum, include the following information:
- a. All site location information, including vicinity map, property identification numbers, ownership, metes and bounds, north arrow;
 - b. Acreage of the entire tract, and of the area within each zoning district or development sub-area, area within floodway, area within floodway fringe, area within open space;
 - c. Identification of existing zoning, as well as the zoning of adjoining properties including properties separated by easements or rights of way
 - d. Identification of proposed zoning, including the maximum density to be used on the site and by development sub-area (of residential or mixed residential/non-residential components), and the maximum floor area (for non-residential components).
 - e. Written consent of the owners of the property proposed for change.
 - f. Identification of the owners of adjoining properties, including property separated by easements or rights of way.
 - g. Existing conditions on the site (manmade, topographic and natural), as well as within 100 feet of the site on adjoining properties (including properties separated by easements or rights of way), including topography, floodplains, stream beds, wetlands, steep slopes, and Inventory sites; ~~and if required, a tree survey.~~ Any resource features used in the density calculations of the site shall also be acknowledged.
 - h. Existing and proposed utility and access easements and rights of way within the site or within 100 feet of the site, including the general layout of any proposed motorized and non-motorized vehicular circulation system and pedestrian circulation system within the development;
 - i. Schematic layout of the proposed development, showing the general locations of various uses, building envelopes, maximum building heights, parking and service areas, access points and circulation routes, and open space and recreation areas;
 - j. Schematic indications of how all buffer requirements will be met;
 - k. A statement indicating how the grading of the site will be accomplished;
 - l. A statement of the maximum impervious surface for the developed site;
 - m. Any other information necessary for determination of the proposal's compliance with district requirements and Ordinance regulations;
 - n. Traffic Impact Analysis and Stormwater ~~Impact Management~~ Analysis, if required with measures required to address any identified deficiencies;
 - o. For nonresidential or multi-family districts, design guidelines indicating how the project will relate to its environment (both built and natural). Design guidelines shall include, at a minimum:
 - (1) A description of the context area (as determined at the pre-application conference). This shall include a description of vegetation in the area, identification of significant vistas, and information regarding the architecture employed in the area, including the massing of buildings, their height, style, and prevalent setbacks.

- (2) A description of the general architectural styles proposed for use in the buildings. This shall include information on rooflines, building materials, and any distinctive architectural features.
- (3) A description of how the proposed design will fit into the context area, including information about transitions and relationships to existing developments.
The information required above may be submitted as text or schematic elevations, but must be of sufficient detail so that there is clear understanding of the intent of the building design;

p. Use of standardized note language and development plan format.

4. Phasing Plans

a. Phasing plans identifying the timing of the stages of development may be provided with any development plan, but shall be required in the following instances:

(1) Projects utilizing the Mixed Use District;

(2) Development within the Suburban Transit Support Areas. Phasing Plans within these Areas shall ensure that the timing of development is tied to the adequacy of available infrastructure (including but not limited to, roads, schools, and libraries) and ensure that development, at build-out, is in a transit-sensitive form; and

(3) Any project proposing 500 or more residential dwelling units

b. The Phasing Plan shall identify the sequence of development for the land uses shown on the Development Plan.

c. The Phasing Plan information may be prepared as a plan, a table, or a report. It shall include general phasing of internal and external traffic circulation systems, amenities, and utility improvements that shall be constructed concurrent with the land use development. Land use development scheduling shall include some general indicator of size, either square footage or acres. The plan shall also indicate the expected impact of the development on existing or proposed public facilities, including, but not limited to, schools, water and sanitary and storm sewer systems, and public safety. The applicant shall provide assurances that all the use categories shown in the Development Plan shall be constructed and that the project will, in fact, result in a mixed-use development satisfying the requirements of this district.

5. With any development plan, the petitioner may add other information, if the petitioner wishes. Additional information may include details pertaining to required information, or other details that the applicant elects to commit to make that exceed Ordinance requirements. All such information provided shall be located in a readily discernable location as required by the Planning Director and referred to as "committed elements."

D. Significant modifications (See Sec. 3.5.12) to the development plan after a public hearing by the Planning Commission may but before approval of the zoning map change, shall warrant another public hearing before the Planning Commission.

~~With any development plan, the petitioner may add other information, if the petitioner wishes. Supporting information may include details pertaining to the proposed improvements, lot~~

~~dimensions, landscaping details, building footprints, building elevations and other such information as may be appropriate.~~

3.5.7 Deferral and Withdrawal of an Application for Zoning Map Change

A. Deferral Requests Approved by the Planning Director

~~A request for a deferral of a rezoning may be made by an interested party.~~

1. Deferrals shall be granted by the Planning Director, or designee, under the following criteria:
 - a. The applicant or an opponent ~~Any individual or group~~ may seek not more than one deferral for each zoning map change request. No more than two deferrals shall be allowed per zoning map change request;
 - b. ~~The~~ Each deferral request ~~may~~ shall be for a maximum of one month. Any deferral request shall be made in writing, citing reasons for requesting the deferral; and
 - c. If the request for deferral is received by the Planning Director or designee and the reasons for the request are made in writing at least ~~12~~ ten working days; ~~not counting holidays~~, prior to the Planning Commission or governing body ~~any meeting where the item would otherwise be~~ is to be considered.
2. Any other deferrals which do not meet the above criteria shall be treated as a continuance.
3. If notification of the hearing has already been sent by the time deferral is requested each request for deferral must shall be accompanied by two sets of mailing labels imprinted with the names and addresses of all previously notified property owners and a fee equivalent to the postage required to re-notify the property owners.

~~Other Deferral Requests~~

~~If the Zoning Committee of the Planning Commission or the governing body has not yet rendered a decision on an application, a deferral may be granted at any time upon a majority vote of the appropriate body.~~

~~The deferral requires notification of all property owners previously notified of the rezoning. If the deferral is made at the request of the applicant, the applicant shall provide the mailing labels and fee specified above. Notifications of deferrals shall be mailed within seven days of the vote for deferral.~~

B. Withdrawal Request by Applicant

1. The applicant petitioning for a ~~rezoning~~ zoning map change may ~~automatically~~ withdraw the application provided that a written request stating the reason for the withdrawal is received by the Planning Director, or designee, at least ~~12~~ ten working days; ~~not counting holidays~~, prior to the public hearing.
2. The request ~~must~~ shall be accompanied by mailing labels imprinted with the names and addresses of the previously notified property owners and a fee sufficient to cover the postage for the re-notification if the withdrawal occurs after the Planning Commission hearing.
3. The applicant petitioning for a zoning map change with a development plan may withdraw the application at any time prior to the opening of the public

hearing by withdrawing consent to the development plan being imposed on the applicant's property.

4. The governing body may vote to allow the applicant to withdraw an application for a ~~rezoning~~ zoning map change at any time.

C. Administrative Withdrawal

The Planning Director or designee may withdraw applications due to the failure of the applicant to submit required information in a timely manner.

D. Resubmittal of Withdrawn Applications

Except in the case of an application where the applicant withdrew consent to a development plan, no previously withdrawn application that was previously withdrawn may be resubmitted until at least 6 months have elapsed since the date of withdrawal. In the case of applications withdrawn as a result of the withdrawal of consent to a development plan after publication of a notice of a public hearing, no new application may be resubmitted until at least 12 months have elapsed since the date of withdrawal. The Planning Director or designee may waive this ~~requirement~~ waiting period if the application has been substantially modified or if there has been a significant change in facts or circumstances since the application was withdrawn.

3.5.8 Action by the Planning Director

- A. The Planning Director or designee shall prepare a staff report that reviews the zoning map change request in light of any applicable plans and the general requirements of this Ordinance.

The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited, unless a development plan is submitted that restricts the permitted range of uses to specific uses. The staff report shall include an evaluation of the consistency of the requested classification with adopted plans and the impact of the requested classification on public infrastructure, as well as any specific requirements of the requested classification.

- B. The Planning Director or designee shall forward completed ~~map amendments zoning map change requests~~ and any related materials to the Planning Commission for a hearing and recommendation at the first regularly scheduled meeting following completion of the technical reviews by staff.

- C. The Planning Director or designee shall forward completed zoning map change requests and any related materials, including the Planning Commission recommendation, to the Governing Body for a public hearing and decision prior to the first regularly scheduled meeting after the Planning Commission hearing.

3.5.9 Action by the Planning Commission

A. General Procedures

1. Before making any recommendation on a petition for zoning map change, the Planning Commission shall consider any recommendations from the Planning Director, or designee and shall conduct a public hearing where interested parties may be heard.

2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5.

3. Except in the case of expedited hearings pursuant to Sec. 3.5.9C, Expedited Hearings, the Commission shall make its recommendation within 90 days of its initial public hearing. ~~except where~~ The time period for a recommendation may be altered, as in the case of significant modifications, in which case one additional 90 day period shall be granted before the case shall go to the governing body. expedited hearings and changed applications.
4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.
5. In no event may the governing body hearing occur less than 30 days after the item was granted expedited status. Commission has received the request for the expedited hearing.
6. The initial zoning of a property in Durham County that has been annexed to the City, where the proposed zoning is the same as it was in Durham County, shall not require a Planning Commission hearing or recommendation.
7. A zoning map change proposed in the County shall not require rehearing by the Planning Commission if the property subject to the proposed change is annexed into the City within 12 months of the original Planning Commission recommendation on the zoning map change, unless the applicant has made significant modification to the proposed change pursuant to Sec. 3.5.12.

B. Changed Application

If the applicant makes significant modifications ~~changes~~ to the application for an amendment (see Sec. 3.5.12) after the Commission has made its recommendation, the Planning Director, or designee, shall, may refer the modified request back to the Commission for an additional public hearing. In such case, the Commission shall make a recommendation to the governing body within 90 days of the public hearing on the changed application, or within six months of the initial public hearing on the first application, whichever occurs first. If a recommendation is not made within this time frame, the governing body may hear the application without a recommendation from the Planning Commission. Additional modifications that would serve to extend the Commission's six months shall be the basis for an Administrative Withdrawal in accordance with Sec. 3.5.7.

C. Expedited Hearing

1. If the governing body has set an expedited hearing concerning a request, in accordance with Sec. 3.5.11B, a public hearing before the Planning Commission shall be held at the first available hearing date or prior to the hearing before the governing body.
2. The Commission shall make a recommendation at this hearing based on the Review Criteria in Sec. 3.5.10, below. The Planning Commission shall not continue a request that is subject to an expedited public hearing.

3.5.10 Review Criteria

In making recommendations, the Planning Commission shall consider the following matters:

- A. Consistency with any adopted land use plans, including the Comprehensive Plan;

- B. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood;
- C. Suitability of the subject property for uses permitted by the current versus the proposed district;
- D. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the City and County; and
- E. The availability of adequate school, road, parks, wastewater treatment, water supply and stormwater drainage facilities for the proposed use.

3.5.11 Action by the Governing Body

A. General Procedures

1. Before taking action on an amendment request, the governing body shall consider any recommendations of the Planning Commission, Planning Director or designee, and of staff agencies, and shall conduct a public hearing where interested parties may be heard.
2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5.
3. Continuances may be granted before action on the request.
4. Following the public hearing, the governing body may approve the request, deny the request, or send the request back to the Planning Commission or a special committee of the governing body for additional consideration.
5. The City Council governing body may approve the request at a less intensive classification than requested with the consent of the applicant (a listing of the zoning districts in order of lower to higher intensity is found in Sec. 4.1). The Board of Commissioners may only act on the original request.
6. Approval of a request petition gives the applicant the ability to proceed with any additional required approvals.

B. Expedited Hearing

1. The governing body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective amendment.
2. The governing body may consider a written request from a potential applicant, or from staff, requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration.
3. An expedited hearing shall not be granted is not an available option when a land use Comprehensive Plan amendment is also required, or when a full staff review, including Traffic Impact Analysis is required. cannot be provided by the agenda deadline for the required Planning Commission hearing.
4. In order to grant the request, the governing body ~~must~~ shall find that at least one of the criteria below have been met:
 - a. Deadlines set by the local, State or Federal government for receipt of application for needed funding, designation or other regulations concerning the property make expedited consideration necessary;

- b. The prospective ~~map or text amendment~~ zoning map change request results from an emergency beyond the control of the applicant, such as response to a disaster;
- c. The prospective ~~map amendment~~ zoning map change request addresses an urgent matter of public health or safety; or
- d. There are special circumstances that will have a substantial negative impact on the development which could not have reasonably been anticipated and which make expedited consideration necessary.

~~Zoning map amendments that have been considered by the governing body in a public hearing may be changed by the applicant without reconsideration by the Zoning Committee of the Planning Commission if the changes do not increase the overall density or traffic impact of the rezoning or do not expand the uses allowed for the project, or do not substantially change the physical layout or points of external traffic ingress or egress. The determination as to whether changes to a proposed rezoning must be sent back to the Planning Commission shall be made by the Planning Director.~~

~~Additional Criteria in Mixed Use (MU) Districts~~

~~In making a decision as to whether to grant the application for the MU District, the governing body shall give consideration to the following:~~

~~The conformance of the proposal to a mixed use development purpose as described in the Purpose Section (see Sec. 4.4.2) and the guarantees that the proposed phasing of the project will result in a mixed use development.~~

~~The compatibility of the proposed mixed use project with existing and proposed development nearby.~~

~~The interaction of each component of the project with subsequent phases as well as the self-sufficiency of each individual phase of the project, to assure the completion of the mixed use project.~~

~~The convenience of the pedestrian linkages and the accessibility of any public spaces.~~

~~The attention to the design of features intended to unify the development and the effectiveness of these features to perform this task.~~

~~The interaction of each component with existing and proposed, on and off site transportation facilities.~~

~~In a Mixed Use District, the development plan may identify certain features that may not be modified under any circumstance without governing body approval, even if the scale of the modifications would normally be approved by another body such as the Development Review Board.~~

3.5.12 ~~Changes-Significant~~ Modifications to Approved Development Plans That Require a Zoning Map Change

- A. The following changes to an approved development plan shall require that the entire plan be resubmitted for a zoning map change rezoning in accordance with the application requirements of this section:
 1. Increase by any amount in the number of residential units or approved density of residential projects in the overall project, except through use of the Affordable Housing Density Bonus pursuant to Sec. 6.6;
 2. Decrease by more than 20% in total density in residential projects outside of the Compact Neighborhood Tier unless that decrease results from an inability to utilize the Affordable Housing Density Bonus pursuant to Sec. 6.6;

3. Decrease by more than 5% in total density in residential projects located within the Compact Neighborhood Tier unless that decrease results from an inability to utilize the Affordable Housing Density Bonus pursuant to Sec. 6.6;
 4. ~~Where there is~~ A cumulative increase of more than 5% or 1,000 square feet, whichever is greater, or cumulative decrease of more than 25 20% in total square footage ~~of occupied buildings~~ within a nonresidential development;
 5. Any change or deletion of a committed element;
 6. Elimination or reduction of a dedication of right-of-way, greenway, or other public component;
 7. A change in the proposed phasing of the project where phasing plans are required;
 8. ~~Where a portion of the previously approved site is rezoned~~ A change from one general category of zoning districts ~~uses (as described in Article 5, Use Regulations)~~ to another category (i.e., ~~single-family~~ residential to office, office to commercial, commercial to industrial, etc); and ~~Changes from single-family to multifamily residential shall be considered a change in general category;~~
 9. ~~Where there is~~ A significant change in number, location or configuration of access points to the development, or significant changes to previously shown public road improvements.; ~~and~~
- B. A change in one component of the approved development plan that does not trigger any of the provisions of paragraph A above shall require zoning map change only of that component.
- C. Notwithstanding the limitations of A above, site plans, preliminary plats, and final plats shall be allowed to deviate from approved development plans, when the deviation is necessary to comply with the requirements of this Ordinance or prior adopted ordinances that govern such plans. Such changes shall be considered administrative adjustments and shall not necessitate a zoning map change.
- D. Notwithstanding these requirements, the governing body may rezone ~~change the designation of~~ less than the entire site when transfers of property to ultimate purchasers in residential areas make ~~the rezoning~~ changing the zoning of an entire previously approved development plan impossible. The governing body may also, in its discretion, require the ~~rezoning of an~~ entire previously-approved site undergo a zoning map change.

Modifications to the Development or Phasing Plans

The standards for modifications of the Development Plans or Phasing Plans are similar to standards found elsewhere in this ordinance. A new traffic impact analysis may be required if the applicant proposes changes which adversely impact traffic. However, some flexibility is allowed because the long term nature of a mixed use development may transcend market changes. Where a conflict occurs with other Sections of this ordinance, the provisions listed below shall apply.

1. DRB Approvals. Modifications approved by the Development Review Board (DRB). However, in granting the MU district, the governing body may limit these approval powers for certain components of the Development or Phasing Plan:

—A. Changes in an identified use to another use in the same category and located in the internal area of the project.

—B. Modifications in the Phasing Plan which do not impede the goal of achieving the intended mix of uses.

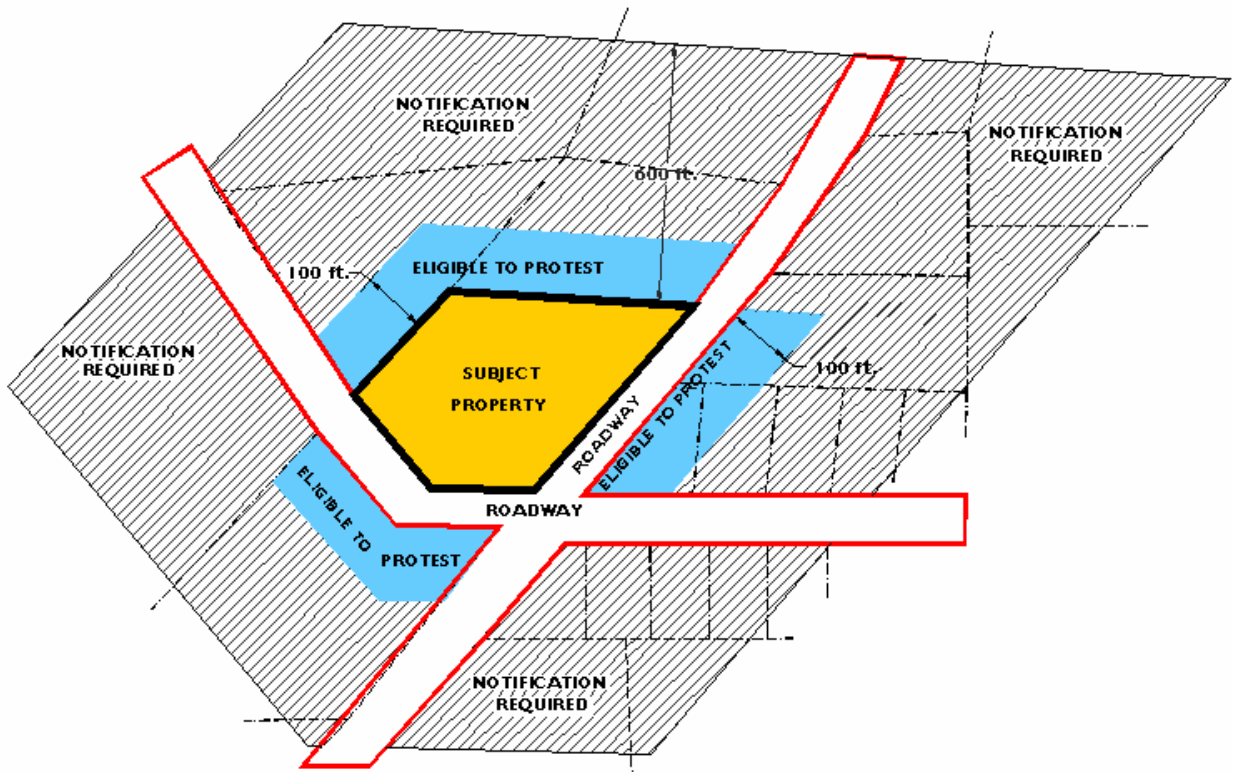
1 ~~-C. Modifications to the pedestrian or open spaces which increase the amount of space or which~~
2 ~~provide new pedestrian or open space in the general vicinity which offsets the lost space.~~
3 ~~-D. Minor changes to the design themes which maintain or improve the same motif included in~~
4 ~~the original approval.~~
5 ~~-E. Reductions in heights of buildings where the buildings are less than 90 feet in height.~~
6 ~~-2. governing body Approvals. Modifications approved by the governing body but not requiring a~~
7 ~~public hearing.~~
8 ~~-A. Changes in location for approved uses.~~
9 ~~(This change reduces (DRB powers.)~~
10 ~~-B. Significant changes to public spaces or elimination of walkways which access public spaces.~~
11 ~~-C. Reductions in the amount of pedestrian or open space with an increase in building floor~~
12 ~~area.~~
13 ~~-D. Changes to phasing or design themes not eligible for approval by the DRB.~~
14 ~~-E. Any change in the height of buildings that are 90 feet or more in height. Any increase in~~
15 ~~height of other buildings where height has been identified on an adopted plan. (Generally,~~
16 ~~buildings between 35 and 90 feet)~~
17 ~~-3. All other changes to the Development Plan may be accomplished by resubmittal of a Plan~~
18 ~~which meets the requirements of Section 4B.2.8 and governing body approval with a Public~~
19 ~~Hearing. Changes to Site Plans shall conform to requirements for Site Plan revisions found~~
20 ~~elsewhere in this ordinance.~~

3.5.13 Valid Protest Petition

A. Defined

A petition in opposition to a ~~zoning map change~~ ~~rezoning~~ shall be considered a "valid protest petition" if the petition meets the requirements of applicable state or local law. In particular, the petition ~~must~~ shall be submitted on time and contain the following:

1. Signatures of property owners comprising ~~of~~ 20% of any of the following:
either:
 - a. The area of the property under consideration; or
 - b. The area within 100 feet of either side or the rear of the subject property with the Planning Director, or designee determining what constitutes the sides and rear of the subject property; or
 - c. The area directly across the street from the subject property and extending 100 feet from the street frontage of the properties across the street.



2. Information required on the form supplied by the Planning Director, or designee.

B. Procedure

1. A form for a valid protest petition ~~is~~ shall be available from the Planning Director, or designee.

2. Completed petitions shall be submitted to the appropriate Clerk's office (City or County Clerk) at least four working days prior to the day of the public hearing. ~~held by the governing body (For example, the Monday before a Monday public hearing).~~
3. The Planning Director, or designee, in consultation with the Attorney for the jurisdiction shall determine if the petition meets the criteria for classification of "valid protest petition". The Clerk shall inform the governing body that a petition has been filed and indicate the determination by the Planning Director, or designee, Attorney whether the petition is valid or invalid. The Planning Director, or designee, shall notify the petitioner as to the validity of the protest petition. Where a substantial modification to a zoning map change application that requires resubmission to the Planning Commission has been submitted, the Planning Director, or designee, shall notify the petitioner, in writing, that a new protest petition is required.
4. Petitions for zoning map change for which a valid protest petition has been filed shall require a ¾ vote of the governing body for approval rather than a simple majority.

C. **Withdrawal**

Persons or entities who have signed protest petitions may withdraw their signatures in accordance with the provisions of this subsection. Any withdrawal must meet standards established for protest petitions and withdrawals established by the Planning Department, and must be submitted no later than three working days prior to the date of the public hearing.

D. **Exemption**

The foregoing provisions concerning protest petitions shall not be applicable to any zoning map change that establishes the City's zoning designation on property that has been added to the City's jurisdiction as a result of annexation, except as provided by general or local law.

3.5.14 Coordination with Site Plans

Approval of ~~zoning map change rezoning~~ with a development plan shall enable the owner or an authorized agent of the owner to prepare a site plan in conformance with the ~~zoning map change rezoning~~ and development plan for the property. The site plan may be prepared for the entire property or phases of the development project in accordance with Sec. 3.7, Site Plan Review.

3.5.15 Subsequent Amendments

When the governing body has taken action on a ~~zoning map change rezoning~~, no new application may be filed for a similar ~~zoning map change rezoning~~ until at least 12 months have elapsed since the date of the previous action. The Planning Director ~~or designee~~ may waive this requirement if the application has been significantly modified or there has been a significant change in the facts or circumstances since the previous request.

3.5.16 Period of Validity

- A. An approved zoning map change shall run with the property and shall be valid until the Official Zoning Map is subsequently amended.

1 B. A development plan approved as part of a zoning map change shall run with the
2 property. In the absence of a statutory vested rights determination, the ability to
3 develop at the maximum intensity shown on an approved development plan shall be
4 secured only upon submission and approval of site plans or other administrative
5 approvals required under this Ordinance. Upon the approval of site plans and
6 similar plans, development may be carried out for the portions of the development
7 plan that have received administrative approval in accordance with the validity and
8 expiration provisions set forth in this Ordinance. This section shall not be considered
9 to limit the ability of the governing bodies to adopt environmental ordinances or
10 other ordinances that meet an immediate health, safety, or environmental need, or
11 are passed in compliance with State or federal mandates, whether adopted as part of
12 this Ordinance or outside of this Ordinance.

13 ~~The development plan shall run with the rezoning of the property and shall be valid until the~~
14 ~~zoning map is amended.~~

15 ~~Coordination with Special Use Permits~~

16 ~~Approval of rezoning with a development plan shall cause the property to be exempt from any~~
17 ~~requirements for a minor special use permit issued by the BOA for the physical development of~~
18 ~~the site. For example, property zoned with a development plan specifying a building height~~
19 ~~typically approved by the BOA, would not be required to obtain a minor special use permit prior~~
20 ~~to site plan approval and construction of the building at the specified height. This exemption~~
21 ~~does not apply to requirements for a major or minor special use permit for certain uses of a~~
22 ~~property. For example, a Day Care use in an I-3 zone would still require a minor special use~~
23 ~~permit from the BOA.~~

24 ~~If the change is to a portion of the previous plan, and the remainder of the previous plan can be~~
25 ~~developed under the original plan, a development plan may be approved for just the portion that~~
26 ~~is being changed. In such cases, the portions still covered by the previous plan shall be indicated~~
27 ~~on the new plan. When the remainder of the previous plan cannot be developed under the~~
28 ~~original plan the entire site covered by the previously approved development plan must be~~
29 ~~submitted for amendment. In addition, the entire site must be submitted for rezoning when~~
30 ~~such site, as modified by the proposed change, differs from the previously approved~~
31 ~~development in any of the following ways: Where there is either an increase of any amount, or a~~
32 ~~cumulative decrease of more than 20 percent, in total density within a residential development;~~
33 ~~When proposed development on a site covered by an approved development plan represents a~~
34 ~~significant change from all or a portion of that plan, the change must be submitted as a zoning~~
35 ~~amendment to the governing body.~~

36 ~~County Commission hearings shall not be held until 25 days or more after a recommendation by~~
37 ~~the Zoning Committee of the Planning Commission.~~

38 ~~City Council hearings shall not be held until 27 days or more after a recommendation by the~~
39 ~~Zoning Committee of the Planning Commission.~~

40 ~~The Zoning Committee shall conduct a public hearing where interested parties may be heard~~
41 ~~and shall consider any recommendation made by the Planning Director.~~

42 ~~When applicable, the Planning Department shall forward completed applications and any~~
43 ~~related materials to the Zoning Committee of the Durham Planning Commission for a public~~
44 ~~hearing and recommendation. The public hearing notification shall be in conformance with~~
45 ~~Section 3.2.5.~~

46 ~~Application forms for rezoning map amendments are available in the City-County Planning~~
47 ~~Department~~

48 ~~Such completed applications shall consist of all information required by the application and the~~
49 ~~specified filing fee. A completed application may be filed with the Planning Department at times~~
50 ~~specified by the Planning Department.~~

1 Zoning text amendment proposals that are not initiated by the Planning Department staff or
2 governing body, should be submitted to the Planning Department for a staff conference prior to
3 official submittal in order to clarify form and language.

4 Notification

5 The application shall be reviewed for completeness by the Planning Department. Copies of the
6 application shall be referred to appropriate Government Departments for review. Required
7 public hearings to consider the application shall be scheduled by the Planning Department.
8 Public hearing notifications shall be made in accordance with NCGS 160A-364 and 384 and
9 NCGS 153A-323 and 343. Among other things, the General Statutes require notification of
10 property owners within 100 feet of the property under consideration and published notices in a
11 newspaper. Durham Planning Department procedures specify that notification may be sent to
12 property owners within 600 feet of any property under consideration outside the Durham City
13 limits and within 300 feet of any property under consideration inside the Durham city limits.
14 Notification may also be sent to an officer of all known neighborhood groups located within
15 1,000 feet of the property under consideration. The Planning Department may also install a
16 placard to identify the property under consideration.

17 Rezoning with a Development Plan

18 Procedure

19 The number of required copies of plans shall be specified in the rezoning application. —
20 Completed Development Plan applications shall be processed in a manner identical to other
21 zoning map amendment requests.

22 County Jurisdiction

23 Vicinity map showing north arrow, scale, name of project, tax map and property number.
24 Boundaries of the property using metes and bounds and the angle of departure of adjoining
25 property lines.

26 Acreage in the tract and amount to be developed.

27 Zoning categories, overlay zones of the subject property and adjacent properties, and the
28 required setbacks of the site.

29 Owners of the property and adjacent properties.

30 Land uses of adjacent properties, and major improvements on the site and within 50 feet of the
31 boundary of the site.

32 Generalized floodplain locations and as well as existing stream beds, and shorelines if any and
33 any information required by Article 11 of this ordinance, such as floodway locations, stream
34 buffers, wetlands, and steep slopes.

35 Existing topography.

36 Existing property lines to be removed.

37 Existing rights-of-way with street names, utility easements, and any other easements either on
38 site or adjacent to the site.

39 Existing water and sewer lines and storm water drainages.

40 Proposed schematic land use plan illustrations indicating the general locations of residential
41 and nonresidential improvements, including the type, number of stories and maximum density
42 of the dwellings, if any, the generalized type of nonresidential uses, (e.g.: commercial, office,
43 industrial), building envelope, maximum building height and maximum floor area. [See
44 Subsection "u" for additional requirements associated with PDR development plans.]

45 Proposed recreation areas and open space reservations and general location as well as location
46 of Durham Historic Sites and/or natural inventory sites, and other areas of unusual natural or
47 environmental significance as defined by Section 11 of this ordinance.

48 Schematic landscape plan including plant material save areas and areas for replanting. The plan
49 should include the information meeting the requirements of Section 10 of this ordinance. The
50 standards of Section 10 may require a tree survey and an identification of tree coverage areas.

51 Proposed circulation pattern which includes generalized locations of streets and pedestrian
52 paths. [See subsection "t" for additional requirements associated with PDR development plans.]

1 Proposed utility locations.

2 In nonresidential or multifamily districts, the development plan must indicate how building and
3 site design relate to the surroundings. This shall be done with building elevations, conceptual
4 design illustrations, or written descriptions of design principles used; or a combination of the
5 above items. Such elevations, illustrations and/or written descriptions shall show how the
6 building design will relate to its surroundings in three main areas: the context area, the building
7 details, and special considerations. These three items are more particularly described below:

8 Context area—The proposed development must be described as to how it relates within a
9 specific context area around the site [determined at the time of the pre-application meeting with
10 staff, generally defined as the notice area required for the rezoning and street approaches to the
11 site in the immediate vicinity of the site.] A description must be given as to the features of the
12 area covering natural or planted landscaping; roadway vistas and views of buildings; historical
13 sites and features; signage; parking areas; building setback, height, mass and scale; and building
14 architecture.

15 Building details—The proposed development must be described in terms of its general
16 architectural styles, roof lines, entryways, windows, exterior building materials, and other
17 distinctive architectural features such as towers, arches, pillars, etc. particularly, as these details
18 are visible from the context area.

19 Special considerations—The proposed development must be described in terms of its
20 relationship to any special considerations of the site or context area. These considerations
21 include transition in the character of an area, established architectural styles present in the area,
22 and design considerations relevant to the effect of lighting, signage, and color schemes on
23 surrounding properties.

24 The elevations, illustrations and/or descriptions shall be of sufficient detail to provide clear
25 guidance for the review of such features on subsequent site plans. Individual details may be
26 revised at the time of site plan approval as long as the revisions result in a comparable effect
27 consistent with the intent of the features.

28 Greenways, trails, open spaces, and railroad corridors designated for preservation on a plan
29 adopted by the governing body.

30 Land intended for dedication or reservation shall be designated as such on development plans in
31 accordance with requirements for dedication and reservation of recreation and open space areas
32 in Sections 5M and 7D of the Merged Durham Subdivision Ordinance. The petitioner may add
33 other information if the petitioner wishes. Supporting information may include details
34 pertaining to the proposed improvements, lot dimensions, landscaping details, building
35 footprints, building elevations and other such information as appropriate.

36 A statement that indicates whether grading for the tract will occur for multiple lots at one time
37 (i.e., mass grading) or on a lot by lot basis. Projects proposing to use mass grading shall provide
38 justification for why mass grading of the tract is required in order to produce the project.

39 Additional requirements for PDR Development Plans: Realizing that PDR Development Plans
40 frequently depict one or more subcomponents, the following additional requirements pertain to
41 PDR Development Plans. If the project is not divided into subcomponents, this information is
42 required for the single site. The PDR Development Plan shall included:

43 Graphics, including proposed typical building footprints on typical lots, typical building profiles
44 and elevations, with designation of public/private streets and typical street cross sections.

45 The estimated acreage of each area or subcomponent of the project.

46 The gross and net residential densities for each subcomponent.

47 The proposed maximum impervious surface coverage for nonresidential and multi-family uses
48 in each subcomponent of the plan, expressed as a percentage of the subcomponent's area.

49 The number of dwelling units, type of unit mix, and residential density of each residential
50 subcomponent of the plan.

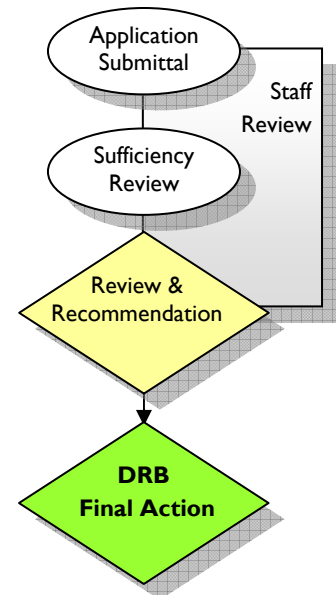
51 The identification and size of floodway and flood fringe acreage to be used to transfer densities
52 and the number of units to be transferred from each area.

1 ~~For nonresidential subcomponents: the type of nonresidential uses, building envelope,~~
2 ~~maximum building height and maximum floor area.~~
3 ~~The maximum size, building envelope dimensions, height, and minimum separation distance of~~
4 ~~all residential buildings or structures. Single family proposals shall be exempt from providing~~
5 ~~height information.~~
6 ~~The percentage of the total site area to be devoted to publicly owned open space and recreation~~
7 ~~areas as well as privately held open space and recreation areas and the square footage of these~~
8 ~~uses.~~
9 ~~The proposed circulation pattern within each subsection of the PDR plan.~~
10 ~~The proposed utility locations within each subsection of the PDR plan.~~
11

Sec. 3.6 Subdivision Review

3.6.1 Applicability

- A. Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street right-of-way or a change in existing street right-of-way. Subdivision approval shall be required before the division of land (for any purpose) into two or more parcels.
- B. All requirements imposed through a site plan shall run with the land and shall apply against any owner, subsequent owner, or occupant.



3.6.2 Actions Exempt from Subdivision Requirements

- A. The following shall not be considered “subdivision” and are exempt from the provisions of this section:
1. The combination or recombination of lots, or portions of lots, previously created and recorded, if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of applicable city/county this Ordinance;
 2. The division of land into parcels greater than ten acres if no street right-of-way dedication is involved;
 3. The public acquisition of strips ~~or~~ of land for the widening or opening of streets or the location of utility right-of-way; and
 4. The division of a tract in single ownership of which the entire area is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of applicable city/county this Ordinance.
- B. ~~No city or county~~ review or approval is required for exempt subdivisions; however, Planning Director or designee certification of exempt status is required. Exempt subdivision plats shall be stamped by the Planning Director or designee, noting their exemption, and signed so that they can be recorded by the Office of the Register of Deeds.

~~When only a portion of a large tract of land is proposed for division into lots leaving a residual tract of at least ten acres, the subdivision shall be required to plat only the parcel to be subdivided and only that parcel shall be subject to the requirements of this Chapter.~~

3.6.3 No Subdivision without Plat Approval

- A. No subdivision ~~plat~~ of land within the jurisdiction of either the City or County, ~~which is not exempt as specified in Section 3.6.2 above~~ may be filed or recorded with the Office of the Register of Deeds until it has been submitted to and approved by the appropriate board or agency Development Review Board, Planning Director, or Director’s designee as specified herein and until the approval is entered on the face of the plat.

~~after the effective date of this chapter, a plat of a subdivision filed or recorded in the Office of the Register of Deeds without required approval shall be null and void for purposes of this ordinance chapter.~~

B. Any person who, being the owner or the agent of the owner of any land located within the jurisdiction of this Ordinance, ~~chapter~~ subdivides land in violation of this Ordinance, ~~chapter~~ or transfers, or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Ordinance, ~~chapter~~ and recorded in the Office of the Register of Deeds, shall be guilty of a misdemeanor and shall be punishable, accordingly, by fine and/or imprisonment.

C. The description by metes and bounds in the instrument of transfer, or other document used in the process of selling or transferring land, does not exempt the transaction from penalties. The City or County, as appropriate, may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order for compliance.

~~Any person who proceeds to develop land as authorized by an approved preliminary plat and who fails to carry out such development according to the provisions of the plat, and all specific conditions of approval shall be in violation of this chapter and shall be punishable by fine. Such fine shall be in accordance with the schedule of fines for violations adopted by the governing bodies.~~

~~Minor Subdivision~~

~~Creation of more than six lots fronting on an existing, publicly maintained street;~~

~~Creation of any new streets or dedication of additional right-of-way;~~

~~Extension of sewer or water lines; or~~

~~Installation of drainage improvements.~~

~~Major Subdivision~~

~~All subdivisions, except those listed above as exempt or minor, shall be considered major subdivisions.~~

3.6.4 Pre-Application Conference

All applicants considering petitioning for a preliminary plat shall schedule a pre-application conference with the Planning Director, or designee to discuss the procedures, standards, and regulations required for subdivision approval in accordance with the provisions of this Ordinance.

3.6.5 Sketch/Concept Plans

It is recommended, but not required, that the applicant applying for subdivision approval an optional step in the subdivision approval process is that of submitting a sketch/concept plan for review by the Planning Director or designee. This plan should, in simple sketch form, show the proposed layout of streets, lots and other features in relation to existing conditions.

3.6.6 Preliminary Plat Approval

A. Applicability

1. A preliminary plat shall be required for all subdivision of land within the jurisdiction of this Ordinance for developments of more than six lots. A preliminary plat is optional for development of six lots or less with no public dedication of land and no streets.

2. ~~Major~~ Subdivision approval requires the submission of both preliminary and final plats and full interagency review for conformity with the requirements of this Ordinance chapter.
3. Where site plans, as required by ~~this the zoning Ordinance~~, serve as preliminary plats for subdivisions, they shall satisfy these submission requirements in addition to those required for zoning compliance.

B. Application Requirements

1. An application for a preliminary plat shall be submitted in accordance with Sec. 3.2.4, Application Requirements.
2. A traffic impact analysis (TIA) pursuant to Sec. 3.3 may be required.

C. Public Notice

As applicable, notification of preliminary plat review shall be sent to public groups including, but not limited to, the following:

1. Durham Public Schools;
2. Durham Area Transportation Authority;
3. Historic Preservation Commission (if applicable);
4. Durham Open Space and Trails Commission; and
5. Durham Bicycle and Pedestrian Advisory Commission.

~~Various neighborhood and small area planning groups~~

D. Action by the Planning Director

Staff review agencies shall complete review and transmit comments back to the Planning Director or designee. If required corrections are minor, as determined by the Planning Director or designee, the Planning Director or designee shall schedule the subdivision for review at the next Development Review Board meeting; if required corrections are extensive, the applicant shall ~~be given an opportunity to~~ correct the plat before it is scheduled for Development Review Board review.

E. Action by the Development Review Board

1. The preliminary plat documents, along with the review comments, will then be considered by the Development Review Board at a public meeting at which a representative of the subdivider or any other interested person may ~~be heard~~ attend.
2. After hearing a recommendation from the Planning Director or designee, the Development Review Board shall approve the plat as is, approve it subject to additional corrections, defer action for additional information and corrections, or disapprove it. Approved or corrected preliminary plats shall be stamped and signed denoting approval. If the preliminary plat is disapproved or deferred, the Development Review Board shall notify the applicant of the reasons for such disapproval or deferral.
3. The preliminary plat shall be approved by the Development Review Board if it meets the following criteria:
 - a. Conforms with all the provisions and requirements of applicable adopted land use plans, including the comprehensive plan; and
 - b. Conforms with all the provisions and requirements of this Ordinance.

1 **F. Reservation of Public Facility Sites and Lands**

2 ***Commentary: This section does not apply to the reservation of lands for public***
3 ***streets and roads, which are regulated according to the procedures set forth by the***
4 ***NC General Statutes.***

- 5 **1.** The review of preliminary plats may be delayed by no more than 45 calendar
6 days if the proposed subdivision contains sites which appear in an adopted plan
7 or policy documents as a future site for a public school or other public facility,
8 recreation area, park, greenway or other open space. During preliminary plat
9 review, the appropriate entity responsible for future site acquisition shall be
10 given 45 calendar days from date of plat submission to decide if it wishes to
11 reserve the site.
- 12 **2.** If the site is not to be reserved, the subdivision shall be processed in the normal
13 fashion. If the agency wishes to reserve the site and specifies such intent in
14 writing to the Planning Director or designee, the subdivision shall not be
15 approved without the reservation.
- 16 **3.** Public school authorities shall have 18 months from the date of preliminary plat
17 approval to acquire the site by purchase, by receipt of dedication, or by
18 initiating condemnation proceedings. If, at the end of the 18-month period,
19 none of the above actions has occurred, the subdivider may consider the land
20 free from reservation and apply for revised preliminary plat approval for its use.

21 ***Commentary: See NC General Statutes 153A-331 and 160A-172.***

- 22 **4.** Other public agencies shall have 120 calendar days from the date of preliminary
23 plat approval to arrange for site acquisition for public facilities by option to
24 purchase, by purchase, by receipt of dedication, or by initiating condemnation
25 proceedings. If, at the end of the 120-day period, none of the above actions has
26 occurred the subdivider may consider the land free from reservation and apply
27 for revised preliminary plat approval for private use of the property.

28 **G. Issuance of Required Permits**

29 Upon preliminary plat approval, the applicant may apply for the required permits to
30 begin site work and the installation of improvements. All site work shall be
31 performed in compliance with the requirements of this section and other applicable
32 regulations of the city, county, and state. No required permit may be issued until the
33 required preliminary plat is approved.

34 **H. Preliminary Plat Revisions**

- 35 **1.** Minor revisions to approved preliminary plats, which reflect the same basic
36 street and lot configuration as used for the original approval, may be approved
37 by the ~~DRB at a scheduled meeting~~ Planning Director or designee.
- 38 **2.** Significant changes to an approved preliminary plat, as determined by the
39 Planning Director or designee ~~DRB~~, ~~must~~ shall be resubmitted for review and
40 approval as if it is a new application.

41 **I. Continuing Validity of Preliminary Plat**

- 42 **1.** An approved preliminary plat shall retain its validity for four years, if:
 - 43 a. A permit to begin development pursuant to the plat, such as a land
44 disturbance permit, a building permit, or an improvement permit has been

issued ~~within two years of approval of the preliminary plat~~ and has remained continuously valid thereafter; and,

b. Building or land disturbing activity has begun on the property.

2. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the preliminary plat for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.

~~subdivider shall be given two years to complete construction of improvements and submit a final plat for approval. Portions of the approved preliminary plat not included within a final plat submitted for approval within two years must be resubmitted for review and approval as if it is a new application.~~

3.6.7 Final Plat Approval

A. Applicability

A final plat shall be required for all subdivision of land within the jurisdiction of this Ordinance except as allowed under North Carolina General Statute.

B. Conformity with Preliminary Plat

The final plat shall conform to the approved preliminary plat and may constitute only that portion of the preliminary plat which is proposed for recordation.

C. Application Requirements

1. When the installation of required site improvements is nearing completion, the subdivider shall submit a final plat for review and approval.
2. An application for final plat approval shall be submitted in accordance with Sec. 3.2.4, Application Requirements.
3. The final plat shall be drawn in accordance with North Carolina General Statute 47-30, Plats and Subdivisions-Mapping Requirements; standard land surveying and mapping practices; and city/county engineering standards. ~~and shall contain at a minimum the information listed below. No processing or review will proceed without the required information.~~

D. Endorsements on Final Plats

The following certificates shall be placed upon all final plats:

1. Certificate of accuracy and mapping by registered surveyor signed and notarized;
2. Certificate of ownership and dedication signed and notarized, including all individuals, partnerships, and corporations, and lenders with financial security interests;
3. Attorney's certification of ownership for any final plat involving a right-of-way dedication signed and notarized; and
4. Review officer's certification.

E. Action by the Planning Director

Staff review agencies shall complete review and transmit comments back to the Planning Director, or designee. If required corrections are minor as determined by the Planning Director or designee, the Planning Director or designee shall schedule the subdivision for review at the next Development Review Board meeting; if

required corrections are extensive, the applicant shall be given an opportunity to correct the plat before it is scheduled for Development Review Board review.

F. Action by the Development Review Board

1. The final plat documents, along with the review comments, will then be considered by the Development Review Board at a public meeting at which a representative of the subdivider or any other interested person may be heard.
2. The Development Review Board shall approve the plat as is, approve it subject to additional corrections, defer action for additional information and corrections, or disapprove it. Approved or corrected final plats shall be stamped and signed denoting approval. If the final plat is disapproved or deferred, the Development Review Board shall notify the applicant of the reasons for such disapproval or deferral.
3. The final plat shall be approved by the Development Review Board if it meets the following criteria:
 - a. Conforms with all the provisions and requirements of applicable adopted land use plans, including the comprehensive plan;
 - b. Conforms with all the provisions and requirements of this Ordinance;
 - c. Conforms with the provisions and requirements of other development-related ordinances; and
 - d. Conforms with the preliminary plat (when required).

G. Issuance of Certificate of Compliance

Although final plats may be approved and building permits issued prior to the completion of all required site improvements, no certificate of ~~occupancy or~~ compliance shall be issued and no individual water or sewer services provided until all required improvements have been completed or until an acceptable performance guarantee has been filed.

H. Expiration of Approval

The subdivider shall have 180 90 days after approval to file and record the final plat with the Office of the Register of Deeds before the approval becomes void.

3.6.8 Waivers

~~The Development Review Board may, by affirmative majority vote, vary or modify specific provisions of this chapter after making all of the following findings:~~

~~Unusual conditions or circumstances peculiar to the site exist;~~

~~Strict application of one or more ordinance provisions would cause unnecessary hardship; and~~

~~Granting a waiver would not violate the intent and purpose of those regulations.~~

For purposes of financing or refinancing development, it is sometimes necessary to subdivide a previously approved development complex (including but not limited to a shopping center, an office or industrial park, or a housing complex) originally located on a single parcel into two or more lots. The Development Review Board may by affirmative majority vote, vary or modify the requirements of this Ordinance and the dimensional, parking, landscaping, and buffering provisions of this Ordinance to permit such subdivision to occur subject to making the following findings:

1. A valid, approved site plan exists for the overall complex;
2. The complex, in its entirety, satisfies all Ordinance requirements; and

- 1 **3.** Each final plat created contains a note stating that the owners acknowledge that
2 the individual parcel is a part of the named development complex, and that
3 deeds of easement, restrictive covenants, and/or other legal documents
4 necessary for the perpetual functioning of the development complex ~~will~~ shall
5 be executed and recorded with the final plat.

6
7 ~~Complete sets of final plat documents shall be submitted to the Planning Department in the~~
8 ~~required number, along with a completed application for review, and payment of the prescribed~~
9 ~~review fee. Staff shall check the submittal for completeness and, if found to be in order, it shall~~
10 ~~be transmitted to appropriate public and utility agencies for review and comment.~~

11 ~~Approval of preliminary plats for subdivisions containing 49 lots or less shall be by~~
12 ~~the Development Review Board. Preliminary plat approvals for subdivisions~~
13 ~~containing fifty (50) lots or more shall be made by the governing body responsible~~
14 ~~after review by the development review board. Attempts to circumvent governing~~
15 ~~body review by submitted multiple preliminary plats for contiguous properties, with~~
16 ~~each containing forty nine (49) lots or less, shall not be allowed.~~

17 ~~Minor subdivisions shall require the submission of final plats which shall be reviewed for~~
18 ~~conformity with ordinance requirements by city/county planning staff in consultation with other~~
19 ~~agency staff as appropriate. The city/county planning director shall determine that all applicable~~
20 ~~requirements have been met prior to approving minor subdivision plats.~~

21 ~~Plat/Plan Submission Requirements~~

22 ~~Preliminary Conference~~

23 ~~Persons considering the subdivision of land are encouraged to consult with the planning~~
24 ~~department before preparing plats. Although such conferences are not required, they may help~~
25 ~~to conserve time, effort, and expense in preparing and submitting the required plans and plats.~~

26 ~~Preliminary Plats~~

27 ~~Preliminary plat documents shall be drawn to the following specifications and shall contain the~~
28 ~~information listed below. No processing or review will proceed without the required~~
29 ~~information. Detailed standards and specifications for design and construction are available~~
30 ~~from city, county, or state agencies, as applicable.~~

31 ~~Review and Approval Procedures~~

32 ~~City-County Planning Department~~

33 ~~The staff of the Durham City-County Planning Department shall be responsible for coordinating~~
34 ~~the review process for preliminary and final plats. All subdivision plats as listed under Section 0~~
35 ~~section 19-2, "Application of regulations" shall be submitted to the Planning Department for~~
36 ~~determination as to the level of review required.~~

37 ~~Minor subdivisions shall be reviewed by planning and other agency staff as appropriate and,~~
38 ~~after being found in compliance with applicable regulations, shall be stamped noting their~~
39 ~~approval and signed so that they can be recorded.~~

40 ~~Major subdivisions shall fulfill the requirements of section 19-4 "plat/plan submission~~
41 ~~requirements" and shall be reviewed according to the following preliminary and final plat review~~
42 ~~processes.~~

43 ~~Preliminary Plats~~

44 ~~Submittal~~

45 ~~Complete sets of preliminary plat documents shall be submitted to the Planning Department in~~
46 ~~the required number, along with a completed application for review, and payment of the~~
47 ~~prescribed review fee. Staff shall check the submittal for completeness and, if found to be in~~
48 ~~order, it shall be transmitted to appropriate public entities and utility agencies for review and~~
49 ~~comment.~~

50 ~~Development Review Board Action~~

1 The subdivision documents, along with the review comments, shall then be considered by the
2 Development Review Board at a scheduled public meeting at which a representative of the
3 subdivider or any other interested person may be heard. If the preliminary plat is for a
4 subdivision containing forty nine (49) or fewer lots, The DRB shall approve the plat as is;
5 approve it subject to additional corrections, defer action for additional information and/or
6 corrections, or disapprove it. If the preliminary plat is for a subdivision containing fifty (50) or
7 more lots, the DRB shall recommend the plat for approval by the appropriate governing body as
8 is, recommend it subject to additional corrections, recommend disapproval, or defer action for
9 additional information and/or corrections. When the DRB has completed action on such plats,
10 the planning staff shall transmit the subdivision documents, along with the DRB
11 recommendations, for action by the governing body at a regular meeting.

12 Appeals to approving authorities

13 The approving authority shall hear and decide appeals from and review any order, decision, or
14 determination made by an administrative official pursuant to the specific provisions of this
15 chapter. The notice of appeal shall be filed with the planning department within 30 calendar
16 days of the action appealed. The filing of such notice stops future action and requires the official
17 whose action is appealed to transmit to the authority all administrative files and records
18 regarding the subject matter of the appeal.

19 The approving authority shall set a reasonable time for hearing the appeal and shall give due
20 notice to the parties involved who may appear in person or by representation. The authority may
21 by affirmative majority vote reverse or modify the order, decision, determination, or
22 interpretation under appeal upon finding appropriate grounds for such action.

23 Appeals from approving authority. Appeals to decisions and actions of the approving authority
24 in the interpretation or application of this chapter may be taken to the superior court by
25 proceedings in the nature of certiorari. Any petition for appeal to the court shall be filed with the
26 court clerk within 30 calendar days of the action appealed.

27 Potential adverse effect upon significant features of the site as described in Article 11 and/or
28 upon the development of the remainder of the parcel or of adjoining properties;
29

Sec. 3.7 Site Plan Review

3.7.1 Applicability

- A. The site plan review process assures any future development will occur in a planned and orderly manner. All proposed development, except for single-family and two-family development on single lots (which may be approved through the issuance of building permits), shall be subject to the site plan review process. A change in the category of use (from overnight accommodations to retail sales, for example) that may result in alternative standards for parking, landscaping, or buffers shall also require a site plan.

B. Types of Site Plans

There shall be three types of site plans with differing levels of approval required for each. The criteria for establishing which type of site plan and the corresponding level of approval for each are indicated below:

1. Simplified Site Plans

a. Criteria

Projects shall be considered simplified site plans if:

- (1) They do not involve the development of more than 25 residential units or 25,000 square feet of non-residential space;
- (2) They do not require a TIA pursuant to Sec. 3.2;
- (3) They request no modifications of any of the standards established in this Ordinance other than those which the Planning Director or designee may make administratively; and
- (4) They do not involve the development of any use that requires the issuance of a special use permit.

b. Approving Authority

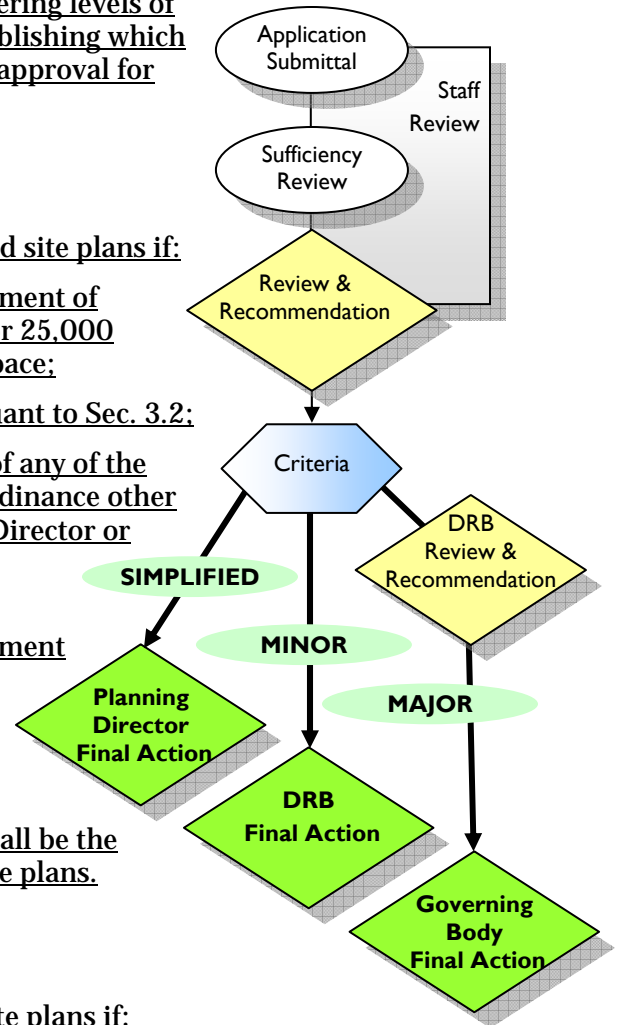
The Planning Director or designee shall be the approving authority for simplified site plans.

2. Minor Site Plans

a. Criteria

Projects shall be considered minor site plans if:

- (1) They request no modifications of any of the standards established in this Ordinance other than those which the Planning Director or designee may make administratively; and
- (2) They do not involve the development of any use that requires the issuance of a major special use permit.



1 b. **Approving Authority**

2 The Development Review Board shall be the approving authority for minor
3 site plans.

4 3. **Major Site Plans**

5 a. **Criteria**

6 Projects shall be considered major site plans if:

7 (1) They request modifications of a standard established in this
8 Ordinance that cannot be approved administratively by the Planning
9 Director or designee, such as:

10 (a) Development within a floodway or floodway fringe pursuant to
11 Sec. 8.8.4;

12 (b) Use of the high density option within the critical area of any
13 watershed protection overlay pursuant to Sec. 8.8.2; or

14 (c) Modification of buffer and landscape standards pursuant to Sec.
15 9.11.3.

16 (2) They involve the development of any project that requires the
17 issuance of a major special use permit.

18 b. **Process**

19 Following review of the proposed development by all reviewing agencies,
20 the Development Review Board shall make a final review of the request
21 and make a recommendation to the approving authority on the project.

22 c. **Approving Authority**

23 The appropriate governing body shall be the approving authority for major
24 site plans.

25 C. All requirements imposed through a site plan shall run with the land and shall apply
26 against any owner, subsequent owner, or occupant.

27 D. A preliminary erosion control plan shall be required

28 **3.7.2 Conformance to an Approved Development Plan**

29 A. Site plans shall conform to approved development plans and to Ordinance provisions
30 passed subsequent to the development plan, unless the governing body has vested
31 the development plan in accordance with the statutory vested rights procedure. In
32 such event, site plans shall conform with the vested development plan.

33 B. The Planning Director or designee shall determine whether deviations between a
34 submitted site plan and a previously approved development plan are significant and
35 require a zoning map change.

36 **3.7.3 Pre-Application Conference**

37 All applicants petitioning for a site plan may schedule a pre-application conference
38 with the Planning Director or designee to discuss the procedures, standards, and
39 regulations required for site plan approval in accordance to the provisions of this
40 Ordinance.

3.7.4 Site Plan Requirements

An application for site plan review shall be submitted in accordance with Sec. 3.2.4, Application Requirements. Site Plan documents shall contain, as a minimum, the information listed below unless the Planning Director, or the Director's designee makes the determination that less detailed information is required for adequate review. No processing or review of a site plan will proceed without the required information. Detailed standards and specifications for design and construction are available from City, County and State agencies, as applicable.

A. General Requirements

1. Title Block - Name of project, labeled: Site Plan; submittal and revision dates; sheet size (36" x 48" maximum) with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 200 feet on a standard engineering scale); north point; property identification number; vicinity map clearly establishing the location of the proposed project, with readily recognizable landmarks, stream buffers, flood plain boundaries, property zoning districts and any overlay zones.
2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of surveyor, engineer, landscape architect, or other designer, with seal.
3. In addition, State or Federal regulations may require that additional information be supplied to the Planning Department as a part of a submittal.

B. Existing Conditions

1. Boundary of the property, using metes and bounds with angle of departure of adjacent properties; site size and amount to be developed; lot lines; building foot prints and square footage; improvements, such as loading areas, parking areas, driveways, alleys, streets, sidewalks, etc.; any septic tanks, drain fields and wells; culverts and other subsurface features; all utility easements, above and below ground, including information on type, size, and elevation; railroads; cemeteries; setback requirements; zoning of the site and adjacent zoning, including any overlay zones; land use of the site and adjacent land uses including major improvements within 50 feet of the subject property; adjacent property owners; adjacent streets, including name and right of way width. Existing features shall be clearly distinguishable from proposed development.
2. Topographic contours at two foot intervals for all property within 100 feet of a proposed development area and topographic contours at five foot contour intervals for the remainder of the property including a source reference; locations and names of water features including shorelines, water bodies, intermittent and perennial streams; a specimen tree survey; locations of drainage ways, stream buffers, floodways, floodway fringes, wetlands and wetland buffers; locations of vegetation, rock outcrops, steep slope areas, Durham Natural Inventory sites and Durham Historic Inventory Sites.
3. A list of any conditions applied to the property as part of any previous approvals.

C. Proposed Conditions

1. Buildings: location, footprint, entrances, area by floor (square feet), height, finished floor elevation, setback requirements defining building envelope. When building descriptions have been included in a zoning approval, the site plan

- 1 shall include building elevations or renderings as well as any other information
2 needed to support the requirements of the zoning map change approval.
- 3 **2. *Site Service Areas and Facilities:*** location of loading, trash/recycling handling
4 and other facilities including height, footprint and screening.
- 5 **3. *Internal Vehicular Circulation and Parking:*** location of drives and driveways
6 [with radii] aisles, and parking spaces, including number of spaces required,
7 and number provided, a justification for the number of spaces exceeding the
8 minimum requirement, the number of handicapped spaces required and
9 number provided, the location and number of spaces devoted to carpools if
10 required, the number of spaces devoted to bicycle parking, a description of the
11 pavement structure, a lighting plan if lighting is proposed.
- 12 **4. *Street Improvements (Public and Private):*** location of improvements or
13 widenings, names, widths of rights of way and pavement, design criteria
14 including sight triangles and a typical cross section; Traffic Impact Analysis: if
15 required.
- 16 **5. *Pedestrian Circulation:*** location of sidewalks and other pedestrian ways
17 including dimensions and surfacing, along streets and other locations; provision
18 of crosswalks.
- 19 **6. *Landscaping:*** location of all plant materials and other landscaping features,
20 including calculations of amount required and the amount provided; the
21 number, size, and description of plant materials, fences, walls and berms;
22 provisions for screening specialized features, such as storage areas; calculations
23 of the amount of tree coverage required and the amount and percentage of tree
24 coverage provided by tree preservation and tree replacement; calculation of the
25 amount of street trees and the amount provided by tree preservation and tree
26 installation; a land disturbance tree survey; and the location and a description
27 of all proposed and required tree protection measures. Calculations of the
28 amount of tree coverage required and the amount and percentage of tree
29 coverage provided by tree preservation and tree replacement; calculation of the
30 amount of street trees required and the amount provided by tree preservation
31 and tree installation; a specimen tree survey; and the location and a description
32 of all proposed and required tree protection measures.
- 33 **7. *Grading:*** location of vegetation to be retained including approximate sizes and
34 protection measures to be used; a depiction of contours at two foot intervals,
35 supplemented with spot elevations when necessary, including location,
36 description, and size of any retaining walls; dimensions of stream buffers.
- 37 **8. *Utilities:*** location and width of all easements and rights of way for water, sewer,
38 storm sewers, gas, electric, communication facilities, or any other utility facility.
- 39 **9. *Storm Drainage:*** location and description of temporary and permanent storm
40 drainage pipes and swales; amount of impervious surface; provisions for
41 erosion and sedimentation controls, including retention and detention facilities;
42 as well as professionally sealed engineering calculations used in the design.
- 43 **10. *Water and Sewer:*** location and description of public and private water and
44 sanitary sewer improvements including connections to existing facilities and
45 maintenance provisions.
- 46 **11. *Property Dedications/Reservations:*** location and description of dedicated or
47 reserved properties under public or private ownership including the

boundaries, size, purpose, future ownership and maintenance provisions for the property. This category includes but is not limited to thoroughfares, rail corridors, greenways, recreation facilities, open space and common areas.

12. Specific performance standards as required by other Articles of the UDO.

D. Traffic Impact Analysis

A traffic impact analysis (TIA) pursuant to Sec. 3.3 may be required.

A traffic impact analysis (TIA) shall be required for site plan where 150 or more vehicle trips are expected to be generated at the peak hour. The following are exempt and shall not be required to submit a traffic impact analysis:

Development projects in the Central Business District and the Downtown Design Overlay;

Phases of new developments which contain public water or sanitary sewer systems which were built and accepted by the City of Durham prior to May 21, 1990 or which contain private water and sanitary sewer systems constructed to State and City of Durham standards prior to May 21, 1990; and

New developments approved by Durham County prior to the implementation of this ordinance (January 1, 1994) which hold valid Unified Development Plans, site plans, special use permits, or building permit approvals.

In the event that additional infrastructure improvements that substantially alter traffic capacity or generation are required in order to support adequately any phases of the intended development, such phases shall not be exempt from the requirements of this section.

If a TIA is approved at the time of development plan rezoning, another analysis is not required with site plan approval if the site plan is consistent with the approved development plan. the traffic impact analysis shall be prepared by a registered professional engineer with experience in traffic engineering.

The term development project when used in this section, applies to any single development or group of developments which, when complete, will function together as a single development in terms of the cumulative impact on surrounding areas and physical infrastructure, and which have shared features such as ownership, site access, infrastructure, or other design elements.

The traffic impact analysis requirements shall apply whether the development project is completed in a single phase or multiple phases.

The Transportation Manager Director shall set forth specific guidelines for preparation of such traffic impact analysis. The traffic impact analysis shall include, but not be limited to, the following:

An estimate of the traffic generated as a result of the proposed development;

An analysis of the existing street system serving the proposed development;

An assessment of improvements needed to the existing street system in order to support the traffic from the proposed development.

Estimates of vehicle trips shall be calculated based on trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers.

Proposed traffic mitigation measures shall be submitted in writing and shall become conditions of the site plan.

3.7.5 Action by the Planning Director

A. The Planning Director or designee shall compile all staff comments on the site plan in light of any applicable requirements of this Ordinance. A copy shall be provided to the applicant.

B. The Planning Director or designee shall be responsible for approving all simplified site plans.

- C. The Planning Director or designee shall provide a copy of all staff comments on minor and major site plans to the Development Review Board.

3.7.6 Action by the Development Review Board

- A. The Development Review Board shall approve, approve with modifications, deny, or continue the minor site plan, including the Traffic Impact Analysis where applicable.
- B. The Development Review Board shall recommend approval, approval with modifications, denial, or may continue the major site plan, including the Traffic Impact Analysis where applicable.

3.7.7 Action by the Governing Body

The governing body shall approve, approve with modifications, deny, or continue the major site plan.

~~plans for such development shall demonstrate in the TIA that measures shall be taken to mitigate traffic impact. The may require that measures be incorporated into the project design or off-site to insure implementation of the traffic impact recommendations. Such measures may include, but are not limited to: lane channelization, turn lanes, public transit, car pool programs, and modifications to hours of operation.~~

3.7.8 Site Plan Review Criteria

~~The following evaluations shall be made during the site plan review process. Site plans that in the opinion of the approving authority do meet the following criteria identified below shall be approved by the approving authority:~~

- A. Compliance with all applicable Ordinance requirements;
- B. Compliance with all previously approved applicable plans, such as a development plan;
- C. Conformance with applicable open space and trails plans;
- D. The site plan displays a site design and development intensity appropriate for and tailored to the unique natural characteristics of the site, such as significant wooded areas, specimen trees, wetlands, steep slopes, Durham Natural Inventory sites, and floodplains;
- E. For nonresidential and multifamily project, the site plan displays the location of trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use;
- F. Adequacy and location of parking areas and pedestrian and vehicular access points;
- G. Adequacy of design of traffic patterns, traffic control measures and street pavement areas, with provisions for maintaining traffic flows and reducing unfavorable effects of traffic on nearby properties;
- H. ~~Compliance with design criteria, landscaping standards, and site construction specifications;~~
- I. Adequacy of stormwater ~~drainage~~ facilities, water supply, sanitary sewer service, fire protection, street signs, and street lighting as evidenced by conformance with department standards, specifications and guidelines;
- J. Compliance with requirements for easements or dedications; and

- K. Where a TIA has been submitted, accommodation of the traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed within the development project.

3.7.9 Modifications Required for Approval

Site plans requiring modifications shall be returned to the Planning Director or designee within 90 days or the site plan application will shall be considered withdrawn. An extension period may be granted by the Planning Director, or designee. Development Review Board.

3.7.10 Corrected Site Plans

Before final approval, the applicant shall submit a the corrected site plan to the Planning Director or designee, which addresses any comments made as part of the approval process. to the Planning Department. The number of required copies shall be determined by the Planning Department.

3.7.11 Issuance of Building Permits

After the final approval, the approved plans will shall be stamped and dated by the Planning Director, or designee, and supplied to appropriate departments. After an approved copy is received by the Inspections Director, or designee, building permits may be issued for the project. No building permit may be issued until the required site plan is approved.

3.7.12 Inspections of Required Improvements

Inspections during the installation of site improvements shall be made by the entity responsible for such improvements as required to certify compliance with approved site plans. No improvements shall be accepted for maintenance by the governing jurisdiction unless and until the requirements regarding public improvements have been met.

3.7.13 Issuance of Certificate of Compliance

Improvements specified in the approved plan shall be made prior to issuance of a certificate of compliance unless an extension of compliance has been prepared and approved in conformance with the requirements of this Ordinance.

3.7.14 Site Plan Amendments

Amendments to approved site plans that will result in equivalent or better performance of the overall criteria used for the original approval may be made by the Development Review Board at a scheduled meeting. Amendments shall not extend the period of validity for the site plan.

- A. Minor changes to the approved site plan, such as those resulting from field conditions or which result in an equivalent or better performance may Change resulting from field conditions may be approved by the Planning Director or designee in conjunction with the Inspections Director of Inspections or their designee.
- B. Significant changes to the approved site plan, as determined by the Planning Director or designee or the Director's designee, shall be resubmitted for approval. Site Plans resubmitted for approval are processed as if they were a new application.

3.7.15 Coordination with Major Special Use Permits

Applications for major special use permits may be submitted concurrently with a site plan. However, decisions shall be rendered with a separate motion.

3.7.16 Continuing Validity of Site Plans

A. An approved site plan shall retain its validity for four years, if:

1. A permit to begin development pursuant to the site plan, such as a land disturbance permit, a building permit, or an improvement permit, has been issued and has remained continuously valid thereafter; and,

2. Building or land disturbing activity has begun on the property.

B. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the site plan for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.

Purpose

~~Site plans are made a requirement by certain sections of this ordinance in order to provide for planned and orderly development. The purpose of this section is to assure that the intent of the zoning regulations is realized through a site plan review procedure and to allow a property owner to record development intentions for a specified period of time.~~

~~A site plan shall be required for all new development that is not single-family, duplex or triplex. New development shall include the following:~~

~~Construction of a building or alterations or expansions to an existing building or use of a property.~~

~~Construction of, or changes to, parking areas, circulation, access points, or other site improvements. Resurfacing is excluded from consideration under these provisions.~~

~~Alterations of water courses, water bodies, or flood plains.~~

~~Changes of land or building use where revisions to parking, landscaping, or buffering standards apply.~~

~~Development of property for which a Development Plan has been approved as part of the zoning of the property (D- Rezoning) (see O, Rezoning with a Development Plan).~~

~~Any land disturbing activity.~~

Site Plan Categories

Types Of Site Plans

Simplified Site Plans

~~Limited documentation approved by the Development Review Board (DRB).~~

~~Limited documentation approved by Planning and Inspections Directors or their designees.~~

Minor Site Plans

~~Full documentation Approved by the Development Review Board.~~

Major Site Plans

~~Full documentation Approved by the governing body.~~

Qualifications For Categories

~~Simplified Site Plans (A) shall be used when the development proposal:~~

~~Involves land disturbing activity of less than 1 acre;~~

~~Involves land disturbing activity of less than 1 acre and alterations to water courses or water bodies; or~~

~~Consists of an expansion of an existing building or structure or construction of accessory building or structure representing 5 percent of the floor area of the existing or proposed buildings or structures on the lot or project of a previously approved site plan; or 1,000 square feet of floor area, whichever is greater; or~~

Consists of a change in vehicular access points in an existing development which necessitate conformance with current landscaping, buffer and parking standards; or
Consists of construction of a new building with a gross floor area of 5,000 square feet or less; or
Involves a lot which is 1/2 acre or less in size. (Incremental submittal of contiguous properties shall be deemed to be one site and shall not qualify for simplified site plan procedures).
Simplified Site Plans (B) shall be used when the development proposal:
Involves construction that contains less than 1,000 square feet of floor area.
Involves an expansion of 1,000 square feet or less to a building on a previously approved site plan, but only if such expansion represents 5 percent or less of the originally approved square footage shown on the site plan.
Involves an expansion of a parking lot of 5 percent or less of the originally approved square footage.
Involves only changes to the landscaping at the base of freestanding signs.
Minor Site Plans
Minor Site Plans shall be used when the development proposal:
Does not require a traffic impact study; and
Consists of a parcel which is 5 acres or less in size; or
Consists of a parcel which is zoned PDR, I 1, RAD, or RSCH; or
Consists of construction of a new building with a gross floor area of 25,000 square feet or less; or
Involves a site being developed in conformance with a previously approved Development Plan. However, it shall be mandatory that all site plans for property in the Shopping Center (SC) or General Commercial (GC) Districts which exceed 75,000 square feet of gross floor area for the entire tract, including outparcels, shall be designated as major site plans. In addition, when the cumulative total of incremental site plan submittals in the SC or GC zone exceeds 75,000 square feet of gross floor area for the entire tract, including outparcels, major site plan approval is required.
Includes land disturbing activity of 1 acre or more.
Additions or modifications to site plans that meet these criteria are also eligible for minor site plan approval. That is, when the lot size or building square footage of the modification exceeds the requirements of the Simplified Site Plan but is within the parameters of a minor site plan, approval may be made through the Minor Site Plan process (DRB approval).
Major Site Plans
Major Site Plans shall be used when the development proposal:
Requires a traffic impact study; or
Does not meet the qualifications of a Simplified Site Plan for a Minor Site Plan.
Within the County jurisdiction, multifamily residential, commercial office, industrial, and research developments in M/LR-B, F/J-A and E-A districts and any development utilizing the high density option and any cluster development requiring site plan approval by the appropriate governing body.
Within the City jurisdiction, multifamily residential, commercial, office, industrial and research developments in M/LR-A, M/LR-B, F/J-A, E-A and E-B districts require site plan approval by the appropriate governing body. In either jurisdiction, any commercial, office, industrial and research development in F/J-A may require major special use permit approval.
Proposes more than 1/3 of the floodway fringe land on the tract to be used for parking.
Submittal
Application forms are available from the City-County Planning Department. Schedules indicating submittal dates will be developed each year and made available to the public. The application form describes the information required. A completed application consists of the application form, the required plans, and the information specified on the application. A presubmission conference is recommended but not required. Detailed standards and

1 specifications for design and construction are available from City, County and State agencies, as
2 applicable.

3 **Departmental Review**

4 Copies of completed site plan applications are circulated to appropriate governmental
5 departments for review. The application review process consists of a comparison of the site plan
6 contents with development requirements.

7 An approved site plan shall remain valid for a period of 24 months after the date of final
8 approval. If no significant improvements are made on the site, or in the absence of
9 improvements, extensive engineering or design work done within 24 months, the plan shall
10 become null and void. At the end of the 24-month period, all site plans, except for residential
11 PDR site plans, will remain valid only for those portions of the site plan where buildings permits
12 are active or Certificates of Compliance have been issued. Site plans for residential PDRs shall
13 remain valid for the entire site plan for 48 months after approval, as long as buildings permits
14 have been issued on a portion of the approved site plan within 24 months after approval of the
15 site plan.

16 The issuance of a building permit for a building within a phase of a project does not extend the
17 site plan validity for the remaining unbuilt portions of that phase.

18 The Development Review Board may renew a previously approved site plan for facilities to be
19 built and owned by a charitable organization. [Charitable organizations include but are not
20 limited to: mosques, synagogues, or other religious institutions.] Proof of charitable support
21 may be required.

22 Each renewal may be for a period of up to 2 years, and a maximum total site plan validity shall
23 not exceed 15 years beyond the date of the original plan approval. [Approval prior to any
24 renewals.] As a part of each site plan renewal request, the charitable organization shall provide
25 the following information:

26 A description of the proposed development priorities and the probable sequence of completion
27 of the improvements, including the estimated dates for initiation of construction.

28 A description of the overall program of the organization to fund the proposed improvements.

29 **Amendments to the Site Plan:** The DRB may approve renewal requests which contain minor
30 amendments to the approved plan. First, the DRB shall review the proposal to determine
31 whether an amendment proposed by the applicant is a minor change which complies with the
32 intent of the original approval. If the proposed amendment significantly changes the intensity or
33 mix of uses, off site impacts, or increases building height or square footage, the amendment
34 shall be considered a major change rather than a minor change, and a new site plan submittal
35 meeting all current ordinance standards is required. Also, in order to assure that the renewed
36 site plan complies as closely as possible with current development regulations, the DRB may
37 require minor changes in the site plan to meet the most current ordinance standards where, in
38 the DRB's opinion, the changes are physically and economically practical.

39 **Approval of the renewal by the DRB shall be dependent on the DRB finding that:**

40 The plan is compatible with and sufficiently addresses any changes in the surrounding area
41 since the original site plan approval.

42 Progress is being made by the charitable organization toward meeting its development goals.

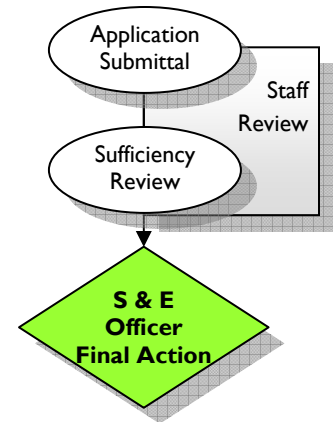
43 The request for site plan renewal must be submitted within 2 years of the last site plan approval.

44 Denial of a renewal request is considered a discretionary action that is not appealable to the
45 Board of Adjustment. A new site plan submittal is required if this deadline is not met. The new
46 submittal shall be treated as a new application and shall meet all ordinance standards in effect
47 at the time of submittal.

Sec. 3.8 Sedimentation and Erosion Control

3.8.1 Applicability

- A. An erosion control plan shall be prepared for all land-disturbing activities subject to this Article whenever the proposed activity is to be undertaken anywhere in the County, including within the City, on a tract comprising more than one acre, if more than one acre is to be uncovered; or on a tract comprising 12,000 square feet or more in water quality critical and/or water quality basin areas, as defined in this the Durham City County Zoning Ordinance, if 12,000 square feet or more are to be uncovered. The Sedimentation and Erosion Control Officer, or ~~their~~ designee, may require an erosion control plan for any land-disturbing activity when off-site damage is occurring, or if the potential for significant off-site damage exists. Additionally, a plan and permit may be required when the applicant, or a parent, subsidiary, or other affiliate of the applicant, has engaged in the activities enumerated in Sec. 3.8.7 section 14-66(i).



| | Less than 12,000 s.f. | 12,000 s.f. to 1 acre | More than 1 acre |
|------------------|-----------------------|-----------------------|------------------|
| Plan | MR | MR(*R) | R |
| Permit | MR | R | R |
| Plan to District | | | R |

MR - May be required when off-site damage is occurring or if the potential for significant off-site damage exists, or if a parent, subsidiary, or other affiliate of the applicant, has engaged in the activities enumerated in Sec. 3.8.7 section 14-66(i).

MR - May be required when off-site damage is occurring or if the potential for significant off-site damage exists, or if a parent, subsidiary, or other affiliate of the applicant, has engaged in the activities enumerated in Sec. 3.8.7 section 14-66(i).

R - Required.

***R** - Required in water quality critical area (WQCA), and water quality basin area (WQBA), Lake Michie/Little River Critical Area (M/LR-A), Lake Michie/Little River Basin/Protected Area (M/LR-B), Falls and Jordan Critical Area (F/J-A) and Eno Critical Area (E-A).

- B. No person shall undertake any land disturbing activity to subject to Sec. 12.10 without first obtaining a permit from the Sedimentation and Erosion Control Officer, or designee.

3.8.2 Application Requirements

- A. Three copies of the plan shall be filed at least 30 days prior to the commencement of the proposed activity with the ~~county and city~~ Sedimentation and Erosion Control Office, which will forward it to the Durham Soil and Water Conservation District. A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of dewatering or lowering the water table must be forwarded to the director of the state division of water quality. One copy of the approved plan shall be kept on file at the job site. After approving the plan, if the Sedimentation and Erosion Control Officer, or ~~their~~ designee, upon inspection of the job site, determines that a significant risk of off-site sedimentation exists, the Sedimentation and Erosion Control Officer, or ~~their~~ designee, will require a revised

plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Sedimentation and Erosion Control Officer, or ~~their~~ designee.

- B. Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (NCGS § 113A-1, et seq.), shall be deemed incomplete until a complete environmental document is available for review. The County ~~and city~~ Sedimentation and Erosion Control Office shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to paragraph E. ~~(e)~~ of this subsection shall not begin until a complete environmental document is available for review.
- C. The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this Article. Plan content may vary to meet the needs of specific site requirements.
- D. Detailed guidelines for plan preparation may be obtained from the Sedimentation and Erosion Control Officer, or ~~their~~ designee, on request.
- E. ~~Sedimentation and~~ Erosion control plans shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, registered architect, registered land surveyor, or certified professional sediment and erosion control specialist. The Sedimentation and Erosion Control Officer, or their designee, may deem such a seal and signature is not necessary due to simplicity of some sites (as the absence of sensitive geographical features and receiving watercourses) and the limited nature of the erosion control measures required.
- F. The approval of an erosion control plan is conditioned on the applicant's compliance with federal, state and local water quality laws, regulations, and rules.
- G. Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principle place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of this state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the North Carolina Sedimentation Pollution Control Act of 1973, as amended and all rules and orders pursuant to it (hereafter referred to "the Act" in this section, this Section, or Sec. 12.10, Sedimentation and Erosion Control ~~article~~, or rules or orders adopted or issued pursuant to this Section, or Sec. 12.10, Sedimentation and Erosion Control ~~article~~.

3.8.3 Fees

- A. The fees charged for the administration and enforcement of this Article shall be as prescribed by the Board of ~~county~~ Commissioners.
- B. To encourage the use of larger, more efficient sediment trapping riser-type basins, the Sedimentation and Erosion Control Officer, or ~~their~~ designee is authorized to charge a reduced fee for all land disturbing in excess of ten acres on a given project. To qualify for the reduced fee, which shall be as prescribed by the Board of ~~county~~ Commissioners, the project or development must meet the following criteria:

1. Fee reduction areas must be tributary to the basin.
2. Basin shall be designed to settle the 40-micron particle with minimum settling efficiency of 70% during the two-year storm event and design must be based on all up stream disturbed areas and tributary drainage area.
3. Basin may not be installed in a live stream.
4. Existing ponds and lakes may not be used as a sediment basin.
5. One party must retain operational control of the basin and all land qualified for fee reduction. Sold outparcels must be permitted separately. Sale of land between the basin and other disturbed areas disqualifies upstream areas for the reduced fees.
6. Performance bond may be adjusted as the amount of disturbed area changes.
7. Additional areas may be added per the criteria enumerated in this subsection only as long as the basin is properly installed and maintained.
8. Permit revocation and/or other enforcement activity for failure to maintain the basin will affect all upstream land-disturbing activities.

3.8.4 Action by Durham Soil and Water Conservation District

The Durham Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the County ~~and city~~ Sedimentation and Erosion Control Office within 20 days after the Soil and Water Conservation District received the erosion control plan, or within any shorter period of time as may be agreed upon by the Soil and Water Conservation District and the County ~~and city~~ Sedimentation and Erosion Control Office. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

3.8.5 Action by Sedimentation and Erosion Control Office

The County ~~and city~~ Sedimentation and Erosion Control Office will review each complete plan submitted to it and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve or disapprove a complete ~~Sedimentation and~~ erosion control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The Sedimentation and Erosion Control Officer, or ~~their~~ designee, must approve, approve with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Sedimentation and Erosion Control Officer, or ~~their~~ designee, determines that the plan is inadequate to meet the requirements of this Article, the Sedimentation and Erosion Control Officer, or ~~their~~ designee, may require such revisions as are necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. Plans for which no permit has been issued shall expire one year from the approval date.

3.8.6 Preconstruction Conference

When deemed necessary by the Sedimentation and Erosion Control Officer, or designee, a preconstruction conference may be required.

3.8.7 Disapproval of Plan

A. An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

1. Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;
2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
3. Has been convicted of a misdemeanor pursuant to NCGS § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
4. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

B. For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.

C. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Article, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this Article.

3.8.8 Amendment of Plan

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as described in this section. Until such time as such amendment is approved by the Sedimentation and Erosion Control Officer, or ~~their~~ designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

3.8.9 Appeals

A. Except as provided in paragraph B. ~~(b)~~ of this subsection, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

1. The disapproval or modification of any proposed erosion control plan or the refusal to issue a land-disturbing permit by the Sedimentation and Erosion Control Officer, or ~~their~~ designee, shall entitle the person submitting the plan, or applying for the permit, to a hearing if such person submits written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of written notice of disapproval or modifications. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.
2. Hearings held pursuant to this section shall be conducted by the Board of ~~county~~ Commissioners within 15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later.

1 **3.** If the Board of ~~county~~ Commissioners upholds the disapproval or modification
2 of a proposed ~~Sedimentation and~~ erosion control plan or refusal to issue a
3 permit following the public hearing, the person submitting the plan or permit
4 application shall then be entitled to appeal the Board of ~~county~~ Commissioners'
5 decision to the State Sedimentation Control Commission as provided in NCGS §
6 113A-61(c) and Title 15 NCAC 4B.0018(d).

7 **B.** In the event that an erosion control plan is disapproved pursuant to Sec. 3.8.7 ~~section~~
8 ~~14-66(i)~~ the County ~~and city~~ Sedimentation and Erosion Control Office shall notify
9 the Director of the Division of Land Resources (within DENR) of such disapproval
10 within ten days. The County ~~and city~~ Sedimentation and Erosion Control Office shall
11 advise the applicant and the director in writing as to the specific reasons that the
12 plan was disapproved. The applicant may appeal the County ~~and city~~ Sedimentation
13 and Erosion Control Office's disapproval of the plan pursuant to Sec. 3.8.7 ~~section~~
14 ~~14-66(i)~~ directly to the commission.

15 **3.8.10 Expiration**

16 A land-disturbing permit shall lapse at the end of:

17 **A.** One year from the date of issuance if no land-disturbing activity has been undertaken
18 in that period. No land-disturbing activity may take place until the person
19 responsible has applied for, and received, a new land-disturbing permit. The fee for
20 the new permit shall be 100% of the current applicable fee.

21 **B.** A two-year period, unless it is extended by the Sedimentation and Erosion Control
22 Officer upon written request of the permit holder. The request for extension shall
23 include reasons for incompleteness of the work. After review of the original plan and an
24 on-site inspection of the completed work, the permit may be extended effective for a
25 period not to exceed six months from the date of expiration of the original permit.
26 The fee for the extended permit shall be 25% of the current applicable fee. If work
27 cannot be completed and the site permanently stabilized prior to expiration of the
28 permit or permit extension, then a new land-disturbing permit must be applied for
29 and obtained as described in this section.

Sec. 3.9 Special Use Permit

3.9.1 Applicability

A. Special uses within the zoning districts are generally considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses may require individual review.

B. A minor special use permit shall be required for all minor special uses as set forth in the use table in Sec. 5.1. Minor special use permits require approval by the Board of Adjustment.

C. A major special use permit shall be required for all major special uses as set forth in the use in Sec. 5.1. Major special use permits require approval by the appropriate governing body.

~~A major special use permit shall be required of development projects and site plans for which a traffic impact analysis (TIA) is required in Sec. 0 and which are projected to generate:~~

~~Six hundred or more vehicle trips at the peak hour; or~~

~~Three hundred or more vehicle trips at the peak hour and which will be served by any street operating at a level of service lower than the jurisdiction's adopted level of service.~~

~~A special use permit shall not be required of development in the RSCH, and RAD zones or development encompassed by an existing or proposed development plan Zone [D] even when projected traffic is expected to exceed levels specified above.~~

3.9.2 Pre-Application Conference

All applicants applying for a special use permit shall schedule a pre-application conference in accordance with Sec. 3.2.1.

3.9.3 Application Requirements

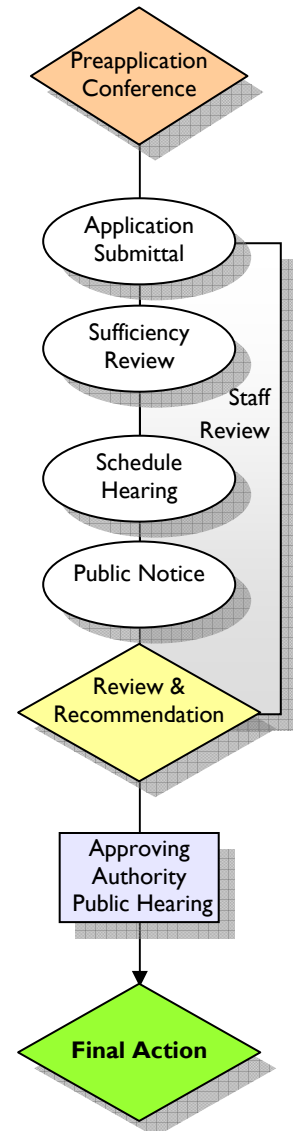
All applications for special use permits shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.9.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as set forth in Sec. 3.2.5.

3.9.5 Action by the Planning Director

The Planning Director or designee shall prepare a report that reviews the special use permit in light of any requirements of this Ordinance. A copy shall be provided to the Board of Adjustment or the governing body, as appropriate, and the applicant.



3.9.6 Approval of a Minor Special Use Permit

- A. Prior to scheduling the public hearing on the minor special use permit, the corresponding site plan shall be ready for action by the approving authority.
- B. After conducting the public hearing, and hearing the recommendations of the Planning Director or designee, the Board of Adjustment shall:
 1. Approve the request;
 2. Approve the request with conditions.
 3. Deny the request; or
 4. Continue the hearing.
- C. The Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the minor special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.7 Approval of a Major Special Use Permit

- A. Prior to scheduling the public hearing on the major special use permit, the corresponding site plan shall be ready for action by the approving authority.
- B. After conducting the public hearing, and hearing the recommendations of the Planning Director, Transportation Manager, or their designee as appropriate, the governing body shall:
 1. Approve the request;
 2. Approve the request with conditions.
 3. Deny the request; or
 4. Continue the hearing. ~~Defer action until additional information is received;~~
- C. The governing body may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the major special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

~~After conducting the public hearing, , the governing body shall:~~

~~Deny the request;~~

~~Defer action until additional information is received;~~

~~Approve the request; or~~

~~Approve the request with conditions.~~

~~The governing body may attach conditions to the major special use permit to ensure that adequate traffic mitigation measures are associated with new development. Conditions shall specify the traffic improvement measure, the party responsible for the improvement, the cost of the improvement, the funding measures, and the proposed completion date of the improvement. Maximum trip generation at peak hour shall be specified as a condition of multi-phased developments and may be specified with other developments. In all cases where a maximum vehicle count is specified as a condition of the major special use permit, the vehicle count shall not be exceeded unless an amended major special use permit is issued by the governing body. The governing body may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of~~

~~the major special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this ordinance.~~

3.9.8 Criteria for Approval of Major and Minor Special Use Permits

A. General Findings

Applications for major or minor special use permits shall be approved only if the ~~approving authority governing body or the Board of Adjustment~~ finds that the use as proposed, or the use as proposed with conditions, is:

1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. In conformance with all special requirements applicable to the use; ~~the Supplementary Requirements Section of this ordinance~~
3. Will not adversely affect the health or safety of the public; and
4. Will adequately address ~~In conformance with the considerations~~ review factors identified below.

B. Review Factors

The applicant shall demonstrate that the ~~considerations~~ review factors listed below have been adequately addressed. If an application is denied, the ~~approving authority governing body or the Board of Adjustment~~ shall specify which of these ~~considerations~~ review factors, if any, were not adequately addressed.

1. Circulation

Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

2. Parking and Loading

Location of off-street parking and loading areas.

3. Effect on Adjacent Property

Effects of the proposed use on nearby property, including, but not limited to, the effects of noise, glare, odor, and traffic.

4. Service Entrances and Areas

Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.

5. Utilities

Location and availability of utilities.

6. Screening, Buffering and Landscaping

Installation of screening, buffering, fencing and landscaping where necessary to protect adjacent property.

7. Environmental Protection

Preservation of tree cover, Durham Inventory Sites, floodplain, stream buffers, wetlands, steep slopes, open space and other natural features.

8. Signs and Lighting

Locations of exterior lighting and signs with reference to glare, traffic safety, economic effect and compatibility with other property in the area.

9. Open Spaces

Location of required yards and other open spaces and preservation of existing trees and other natural features.

10. Compatibility

The level of general compatibility with nearby properties and the appropriateness of the use in relationship to other properties.

11. Other Factors

Any other review factors which the approving authority governing body or the Board of Adjustment considers to be appropriate to the property in question.

~~Criteria for Approval of a Major Special Use Permit Requiring a TIA, the governing body shall make all of the following findings when approving a major special use permit.~~

~~The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impact shall include:~~

~~Substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or~~

~~The need to widen local residential streets which would detract significantly from the character or basic function of a nearby street.~~

~~Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.~~

~~The traffic generated by the development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impact shall include:~~

~~Undue concentrations of air pollutants; or~~

~~Excessive noise or vibrations.~~

~~The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed within the development project. Proposed mitigation measures shall be submitted in writing and shall become conditions of the major special use permit.~~

~~The adopted level of service for the roadway may be considered in the determination of the roadway's ability to accommodate traffic, but it may not be the sole determining factor in the findings of the governing body.~~

Coordination with Site Plans

~~When required, site plan applications shall be filed concurrently with minor and major special use permit applications. Since most of the information included in a site plan would be informative to the Board of Adjustment in decision making, copies of site plans shall be sent to the, respectively, and presented at the public hearing. However, all approvals of major and minor special use permits shall be conditioned on approval of the site plan. No building permit may be issued until the major or minor special use permit and the site plan are both approved.~~

3.9.9 Coordination with Variances

Applications for variances may be submitted concurrently with requests for major and minor special use permits. ~~Notifications and hearings may be combined.~~

However, decisions shall be rendered separately for any variance and the special use permit.

~~If the Board of Adjustment grants a variance or minor special use prior to approval of a major special use permit for traffic impact, the governing body shall be advised of the approval. However, any approvals by the Board of Adjustment become null and void if a major special use permit for traffic impact and a site plan are not approved for the development.~~

3.9.10 Coordination with Zoning Map Change Applications

~~An application for a major or minor special use permit for Traffic Impact may be reviewed concurrently with a zoning map change application and applications for major and minor special uses. However, decisions shall be rendered with a separate motions.~~

3.9.11 Resubmittals

~~An application for a major or minor special use permit which has been denied may be resubmitted prior to the lapse of one year only if there has been a change in circumstances, as determined by the Planning Director or the Director's designee.~~

3.9.12 Amendments

~~Field Alterations or revisions to approved major or minor special uses may be approved by the Development Review Board Planning Director or designee if the major or minor special use still meets the intent of the standards established with the original approval. The applicant may appeal a decision of the Development Review Board to the governing body. Major changes Significant modifications to approved major or minor special uses, as determined by the Planning Director or designee, shall require submittal of a new application.~~

3.9.13 Expiration ~~and Extensions~~

~~A major or minor special use permit shall become null and void in any of the following cases:~~

- ~~A. If a site plan is not approved within 12 24 months of the date of permit approval.~~
- ~~B. Where-If an approved site plan or building permit expires.~~
- ~~C. Where-If a building permit is not issued within two years 24 months of the date of approval, in cases where a site plan is not required.~~
- ~~D. If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs. The addition of language to the special use permit regarding such voiding shall not be required.~~

~~If the governing body or the Board of Adjustment fails to find conformance with the conditions listed above, or makes findings which are inconsistent with those conditions listed above, then the proposed permit shall be denied.~~

3.9.14 Appeal

Appeal from a final action by the approving authority on a major or minor special use permit may be taken by filing a petition for *certiorari* with the Durham County Superior Court.

~~These procedures are established to insure that traffic flows are maintained or improved as new development occurs. Provisions are made for the issuance of special use permits, in certain circumstances, as a means of studying traffic patterns, providing for roadway improvements, or restricting development in which proposed improvements are not sufficient to address traffic impact.~~

1 Approval Process

2 Review of TIA when a Special Use Permit is Required

3 Submission and review of proposals that require a Special Use Permit: When a Special Use
4 Permit is required, the applicant shall submit a traffic impact analysis to the Planning
5 Department and the Transportation Department who shall recommend findings to the
6 governing body.

7 Special Use Permit Hearing

8 The procedures for the Special Use Permit hearing for traffic impact shall be the same as those
9 specified for Major Special Use Permits including the notification requirements found elsewhere
10 in this ordinance. The governing body may: deny the special use permit, approve the special use
11 permit, or approve the special use permit with conditions.

12 Development in the Central Business District (CBD) zone or in the Downtown Transition Area
13 Overlay zone is also exempt.

14 Traffic impact analysis shall not be required of single family residential development, duplex
15 development, and triplex development.

16 When a special use permit is required for a traffic impact analysis, the Planning Director and the
17 Transportation Director shall recommend their findings to the governing body.

18 Procedure

19 Applications for minor special use approvals shall be filed with the City County Planning
20 Department along with a fee prescribed by the governing body. Pre-filing meetings with
21 administrative staff prior to filing are recommended.

22 Staff will schedule a public hearing with the Board of Adjustment for completed applications.

23 A notice of the time and place of the public hearing shall be published twice in a newspaper of
24 general circulation in the County. The first notice shall be published not less than 10 nor more
25 than 25 days prior to the date of the hearing. In addition, a mailed notice of the time and place
26 of the hearing stating the property location and the nature of the request shall be mailed by first
27 class mail to the property owner and all property owners within 300 feet of the property under
28 consideration. Addresses for notification purposes shall be the most recent address available
29 from the County tax abstracts. Placards may also be placed on the property or at a point visible
30 from the nearest public street.

31

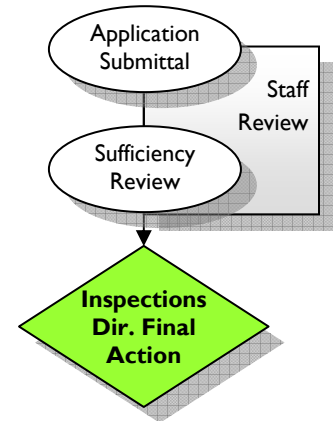
Sec. 3.10 Sign Permit

3.10.1 Applicability

- A. Certain signs shall be allowed without sign permits (as set forth in Article 11, Signs). Signs requiring permits shall be for signs allowed in conformance with Section 12.8 shall be issued by the Inspections Department in accordance with the following procedures.

Commentary: A common signage plan may be required before a sign permit can be issued (see Sec. 3.11).

- B. Internally oriented signs not legible from the public right-of-way shall not require a sign permit; however, electrical or other permits may be required. Internally oriented signs not visible from the public right-of-way may be subject to all applicable requirements of Article 11, Signs.



3.10.2 Application Requirements

- A. Except as provided in Article 11, Signs, no sign may be erected, moved, enlarged, or altered except in accordance with this Ordinance and pursuant to the issuance of a sign permit.
- B. A sign permit application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.10.3 Action by the Inspections Director

Upon review of the application, the Inspections Director or designee shall approve the sign permit provided the sign meets all requirements of this Ordinance Zoning, and all other applicable electrical and North Carolina Building Code requirements; the applicant shall receive a permit to erect or install the approved signs.

3.10.4 Inspection of Permanent Signs

- A. The applicant shall request an inspection by the appropriate inspector after installation of the signs.
- B. If the signs are found to be in compliance, the applicant shall receive a permanent seal which identifies the sign. The applicant shall attach the identification in a conspicuous location which is accessible to the Inspections Director or designee. It is recommended that businesses place the permit in a lower corner of the front door of the business in those cases where the seal is not affixed to the sign.
- C. The sign permit shall be null and void if sign installation is not completed within six months or the signs are not in conformance with the approved application. The Inspections Director may grant one 30-day extension to the sign permit.
- D. Valid sign permits may be assigned assignable to a successor as holder of a business license for the same premises.

3.10.5 Temporary Sign Permits

A temporary sign permit shall be issued in accordance with Article 11, Signs. A common signage plan shall not be required for applications for temporary sign permits. One temporary sign may be allowed for a maximum period of 30 days for special events. Permits for temporary signs shall not be issued for consecutive time periods. The approval time period shall be specified on the permit.

3.10.6 Revocation of a Sign Permit

The sign permit shall be revoked if a sign is found to be in violation of the requirements of this Ordinance, or other applicable electrical and North Carolina State Building Code requirements.

3.10.7 Appeal

Final action on a sign permit may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Applications for permanent and temporary signs shall be submitted on forms provided by the Inspections Department. The completed application shall be accompanied by the specified fee and the following information:

Name and address of the sign owner and the sign installer.

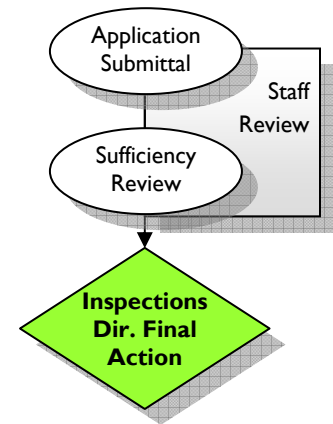
Drawings showing the design, location, content, and dimensions of the sign and the design and dimensions of any measures used to support the sign or used to affix the sign to a wall, window or the ground.

Sec. 3.11 Common Signage Plan

3.11.1 Applicability

Prior to the issuance of a sign permit for one or more buildings or businesses in the same project, a common signage plan shall be required, except as follows:

- A. Internally-oriented signs not visible from the public right-of-way shall not be required to submit an approved common signage plan; and
- B. Applications for temporary sign permits shall not be required to submit an approved common signage plan.



3.11.2 Application Requirements

- A. The elements of a common signage plan shall be in accordance with Sec. 11.8.
- B. A common signage plan application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.
- C. Additional signage requirements are listed in Sec. 11.7, Landmark Signs.

~~Drawings, sketches and or photographs shall be submitted and kept on file to demonstrate the common signage plan. A common signage plan shall consist of 5 elements~~

~~Location~~

~~Identification of sign locations on buildings or property;~~

~~Materials~~

~~A description of the type of sign and sign materials including construction materials and proposed lighting if any;~~

~~Size~~

~~An itemization of sign size or band area at identified locations;~~

~~Letter Style~~

~~A description of dominant letter style and letter height to be used on the signs;~~

~~Color~~

~~A listing of the colors to be used on each sign. A maximum of three colors are allowed in a single common signage plan. Any neon lighting for building signage must be matched to an approved color specified on the common signage plan in order to be included as a part of the color scheme;~~

~~Consistency~~

~~Where more than one sign is located on a property, or where more than one building or business is located in a single development project, such as a shopping center, the common signage plan will demonstrate that these elements create consistency and uniformity among signs within the project.~~

3.11.3 Action by the Inspections Director

- A. Upon hearing a recommendation from the Planning Director, or designee, the Inspections Director, or designee, shall approve the common signage plan provided the plan meets all the requirements of this section.
- B. The approving authority Inspections Director, or designee, may allow modifications to the lettering style to accommodate state and federally registered trademarks (logos) if the approving authority Inspections Director, or designee, feels that the

intent of the common signage plan requirements ~~will~~ shall be maintained. In allowing the modifications, the ~~approving authority~~ Inspections Director, or designee, may limit the logo size. The requirements of a common signage plan shall apply to all businesses within a related project, even if the properties have been subdivided.

- ~~6.~~ Minor alterations in sign locations resulting from unexpected conditions on the site may be approved by the Inspections Director, or designee. ~~the Director's designated representative.~~

3.11.4 Revisions and Amendments

Revisions or amendments to the common signage plan shall require documentation from all tenants on the property prior to approval. Signs erected after September 1, 1989 and subsequently made nonconforming because of an amendment to a common signage plan shall be brought into compliance with the amended plan within six months of approval of the amended plan.

~~Conflict with UDO~~

~~In the case of any conflict between the common signage plan and the zoning this ordinance, the requirements of this ordinance shall apply.~~

3.11.5 Appeal

Final action on a common signage plan may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

~~Prior to issuance of any sign permit in a development containing several buildings or businesses, a common signage plan for the development shall be approved and filed with the Inspections Director. signage plans for developments containing 20,000 square feet or less of floor area may be approved by the Inspections Department. Signage plans for developments of 20,000 square feet of floor area or greater shall be approved by Development Review Board.~~

Sec. 3.12 Temporary Use Permit

Commentary: Temporary outdoor uses should not be confused with permanent outdoor activities (for example, a car sales lot) that are only allowed in certain districts and require site plan approval, nor should they be confused with an outdoor display area (for example, a garden center that is part of a building supply store) that may be a part of a retail store and require site plan approval.

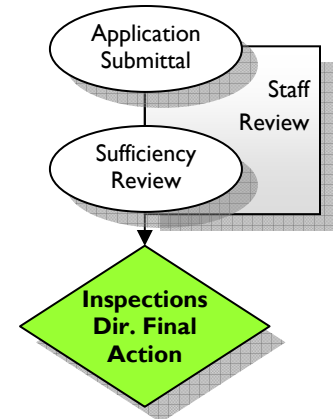
3.12.1 Applicability

- A. Temporary activities uses occurring on property outside of the public right-of-way shall be allowed upon the issuance of a temporary use permit ~~by the Inspection Director~~, except as set forth in, Sec. 5.5, Temporary Uses for residential yard/garage sales which do not require the issuance of a temporary use permit.

Commentary: Standards for specific uses are included in Sec. 5.5, Temporary Uses.

- B. The provisions of this section shall not apply to sales temporary uses occurring within the public right-of-way; ~~but do apply to activities occurring off the public rights-of-way. Sales occurring within the rights-of-way may be subject to other ordinance provisions and permits. A fee may be charged for the temporary use permit.~~

Commentary: For further details on temporary uses occurring within the public right-of-way see the applicable City or County Code.



3.12.2 Application Requirements

A temporary use permit application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.12.3 Action by the Inspections Director

- A. After receiving the application, the Inspections Director or designee shall have up to 30 days to review the application.
- B. Upon hearing recommendations from all appropriate departments, the Inspections Director or designee shall approve the issuance of a temporary use permit subject to the following:
1. No lighting or electrical service ~~will~~ shall be provided without an electrical permit;
 2. No temporary use structure ~~will~~ shall be erected without a building permit;
 3. No temporary use structure shall block fire lanes or pedestrian or vehicular access;
 4. The site ~~of the temporary use will~~ shall be cleared of all debris at the end of the temporary use. All temporary structures shall be cleared from the site within five days after the use is terminated;

5. Written permission of the property owner for the temporary use shall be provided ~~required as part of the application~~;
6. Adequate parking shall be provided;
7. Required parking for other uses shall remain available;
8. Adequate traffic control measures shall be provided;
9. Adequate provisions for trash disposal and sanitary facilities shall be provided; and
10. When appropriate, adequate provisions for crowd control shall be provided.

- C. Temporary use permits may be renewed one time by the Inspections Director or designee, unless other renewal standards are specified in Sec. 5.5, Temporary Uses, or in other provisions of this section.

3.12.4 Revocation of a Temporary Use Permit

A temporary use permit shall be revoked if the Inspections Director or designee finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

3.12.5 Appeal

Final action on a temporary use permit may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Purpose

~~The purpose of this Section is to provide standards and a permitting process for non-permanent uses in order to protect public safety and general welfare and to avoid uses which will be detrimental to adjacent properties.~~

~~The applicant for a temporary use permit shall provide the following information:~~

~~A description of the proposed use, the proposed beginning and ending dates, and the proposed hours of operation.~~

~~A description of the property to be used for the temporary use or event, including the location of the use in relation to other buildings, the location of parking, and the location of streets to be used for access. Sufficient information shall be provided to assure that adequate parking is provided, that required parking for other uses remains available, and that sufficient traffic control measures will be in place.~~

~~Sufficient information to determine that adequate provisions for trash disposal and sanitary facilities shall be provided. When appropriate, information on crowd control shall be required.~~

~~The Inspections Department may consult with other City or County Departments to determine the suitability of the provisions described in the application.~~

~~Written permission of the property owner for the temporary use shall be required as part of the application.~~

~~Additional information as may be required by the Inspections Department in order to protect the public safety.~~

County Jurisdiction

~~Temporary activities shall be allowed upon the issuance of a temporary use permit by the Inspections Department. The provisions of this Section shall not apply to street vendors and itinerant merchants, but do apply to activities occurring off public rights-of-way. A fee may be charged for the temporary use permit.~~

~~The applicant for a temporary use permit shall provide the following information:~~

1 ~~A description of the proposed use, the proposed beginning and ending dates, and the proposed~~
2 ~~hours of operation.~~

3 ~~A description of the property to be used for the temporary use or event, including the location of~~
4 ~~the use in relation to other buildings, the location of parking, and the location of streets to be~~
5 ~~used for access. Sufficient information shall be provided to assure that adequate parking is~~
6 ~~provided, that required parking for other uses remains available, and that sufficient traffic~~
7 ~~control measures will be in place.~~

8 ~~Sufficient information to determine that adequate provisions for trash disposal and sanitary~~
9 ~~facilities shall be provided. When appropriate, information on crowd control shall be required.~~

10 ~~The Inspections Department may consult with other City or County Departments to determine~~
11 ~~the suitability of the provisions described in the application.~~

12 ~~Additional information as may be required by the Inspections Department in order to protect~~
13 ~~the public safety.~~

14 ~~Administration~~

15 ~~The temporary use permit may be granted by the Inspections Department for a specified period~~
16 ~~if the Inspections Department determines that the use will not be detrimental to surrounding~~
17 ~~properties. In granting its approval, the Inspections Department may require additional~~
18 ~~conditions regarding hours, location, parking, screening, access, safety, or other factors which~~
19 ~~will protect the health and safety of the public. Appeals of the Inspections Department decision~~
20 ~~may be made to the Board of Adjustment.~~

21 ~~Approval of a All temporary use permit, if granted, shall be issued on the condition that:~~

Sec. 3.13 Home Occupation Permit

3.13.1 Applicability

A home occupation (see Sec. 5.4.4) shall require a permit, as set forth below.

3.13.2 Application Requirements

A home occupation application shall be submitted in accordance with Sec.3.2.4, Application Requirements.

3.13.3 Action by the Planning Director

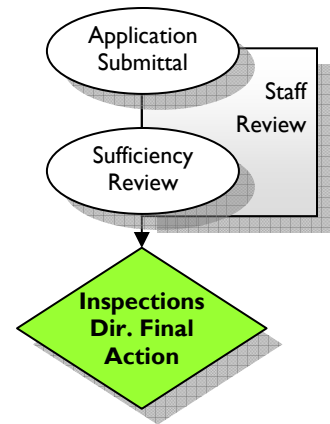
Upon review of the application, the Planning Director, or designee, shall approve the home occupation permit, provided the home occupation meets all requirements of this Ordinance.

3.13.4 Revocation

The home occupation permit shall be revoked if the home occupation is found to be in violation of the requirements of this Ordinance.

3.13.5 Appeal

Final action on a home occupation permit may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.



Sec. 3.14 Administrative Adjustment

3.14.1 Applicability

The Planning Director or designee shall be authorized to approve minor specified deviations as specified in Sec. 3.14.3 where, owing to special conditions, strict enforcement of the provisions of this Ordinance would be physically impractical.

3.14.2 Application Requirements

An application for an administrative adjustment shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.14.3 Action by the Planning Director

A. The Planning Director shall have the authority to authorize the following administrative adjustments:

1. A reduction of up to 10% of the required front, side or rear yard setback for any encroachments into required setback as of the effective date of these regulations;
2. Minor adjustments to site plans consistent with the requirements of Sec. 3.7.14.
3. Minor adjustments to Development Plans consistent with the requirements of Sec. 3.5.12.

B. Any request for deviation from the provisions of this Ordinance not listed above shall be reviewed by the Board of Adjustment as provided in Sec. 3.15, Variances.

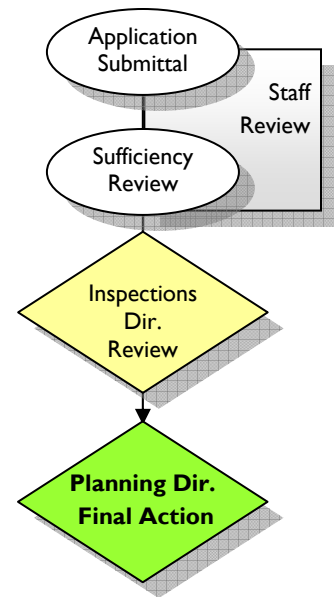
3.14.4 Administrative Adjustment Criteria

To approve an administrative adjustment, the Planning Director or designee shall make an affirmative finding that all of the following criteria are met:

- A. That granting the administrative adjustment will not have an adverse impact on land use compatibility;
- B. That granting the administrative adjustment will not materially and adversely affect adjacent land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate buffering, screening, setbacks and other land use considerations; and
- C. That granting the administrative adjustment shall be consistent with the purposes and intent of this Ordinance.

3.14.5 Appeals

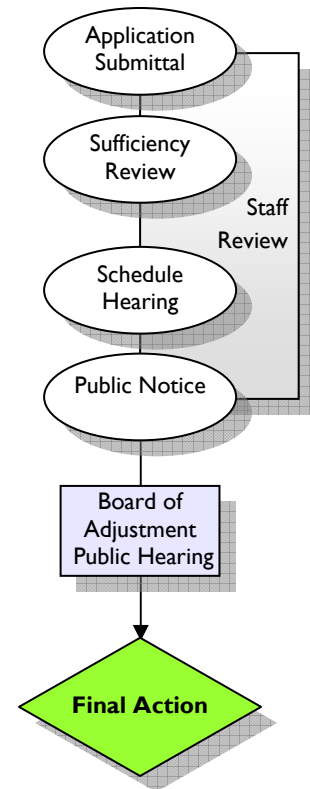
Final action on an administrative adjustment by the Planning Director or designee may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.



Sec. 3.15 Variance

3.15.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may ~~also~~ grant variances in the following special circumstances, as indicated elsewhere in ~~the this~~ Ordinance:
1. Reconstruction, rehabilitation, or restoration of structures that are individually listed or are contributing structures within an historic district (see Sec. 4.10, Historic Districts and Landmarks Overlay).
 2. Construction, reconstruction, or repair of structures which are nonconformities that meet the requirements for Article 14, Nonconformities.
- ~~Construction, reconstruction, or repair of structures in a flood hazard area (Sec. 8.3, Floodplain Protection Standards).~~
- C. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- D. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Sec. 5.1.



Commentary: Variances may be granted for, among other things, height, structure size, lot dimensions, and setbacks.

3.15.2 Pre-Application Conference

All applicants seeking a variance shall schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards, and regulations required for variance approval in accordance to the provisions of this Ordinance.

3.15.3 Application Requirements

An application for a variance shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.15.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as forth in Sec. 3.2.5.

3.15.5 Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below, as well as the burden of persuasion on those issues.

3.15.6 Action by the Planning Director

The Planning Director, or designee, shall provide the Board of Adjustment with a copy of the application and all relevant materials pertaining to the request prior to the public hearing.

3.15.7 Action by the Board of Adjustment

- A. Each decision shall be accompanied by a finding of fact by the Board of Adjustment which specifies the reasons for the decision.
- B. A decision of the Board of Adjustment to approve a variance or reverse an interpretation requires a 4/5th vote of the Board an affirmative vote by five members of the Board.
- C. The Board of Adjustment may approve the request, deny the request, or continue the request deny the application, hold the application for additional information, or approve the application. In approving the variance, the Board of Adjustment may prescribe reasonable and appropriate conditions which will ~~assure~~ ensure that the use will be compatible with adjacent properties and will not alter the character of the neighborhood.

~~The Board of Adjustment prior to the public hearing, shall receive the application and copies of any records pertaining to the application.~~

~~The Board of Adjustment may take action at the public hearing or at a subsequent meeting.~~

3.15.8 Findings

- A. In granting any variance, the Board of Adjustment shall make the following findings:
 - 1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
 - 2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Inspections Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;
 - 3. That the strict enforcement of this Ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Ordinance;
 - 4. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;
 - 5. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;

6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and

7. That the variance will not result in the expansion of a nonconforming use.

B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming feature that would otherwise be disallowed under Article 14, Nonconformities, without making findings A.1 and A.4 above if the remaining findings can be made.

Floodplain Protection Findings

~~At the request of a property owner, the Board of Adjustment may vary the requirements of Sec. 8.3, Floodplain Protection Standards, in accordance with the procedures of Section 16, Variances and Interpretations by the Board of Adjustment. In addition to the findings required, in Section 16.4.1, General Findings of Fact, the Board of Adjustment in granting any variance shall also make the following findings:~~

~~That failure to grant the variance would result in exceptional hardship to the property owner;~~
~~That the applicant has presented proof that alternatives to the variance have been thoroughly examined and are not practicable;~~

~~That the variance represents the minimum amount necessary to provide relief from the hardship in making reasonable use of the property; and~~

~~That the variance would not result in significant degradation of water quality, loss of significant wetlands, increase in sedimentation and erosion, increase in stormwater runoff, loss of significant plant and wildlife habitat or threats to public safety.~~

~~Reasonable conditions may be attached to any variation from the requirements of Sec. 8.3, Floodplain Protection Standards, in order to accomplish the purposes and objectives of this section.~~

3.15.9 Watershed Protection

A. A request for a variance from any requirement of Sec. 8.8, Watershed Protection Standards, that violates any provision in Title 15 NCAC 2B, Sections .0100, .0200 and .0300, as amended, shall be first heard by the Board of Adjustment in accordance with this section and after notification of the appropriate governing body. ~~16 Variances and Interpretations by the Board of Adjustment.~~ A recommendation from the Board of Adjustment for a variance shall constitute a request by the local government for a variance from the North Carolina Environmental Management Commission. Such variances shall be considered "significant variances" in accordance with Title 15A NCAC .0104(r). The appropriate governing body shall be notified of the result of the variance request.

B. For all variance requests from Sec. 8.8, the local government with jurisdiction shall notify and allow reasonable comment period for all local governments having jurisdiction within the watershed area of the water supply source and the entity using the water supply for consumption.

C. ~~The Inspections Planning Director, or designee,~~ shall keep a record of variances to ~~this Sec. 8.8, Watershed Protection Standards, for their respective jurisdictions.~~ This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management, North Carolina Department of Environmental and Natural Resources by January 1st of each

year. The record shall provide a description of each project receiving a variance and the reasons for granting a variance.

3.15.10 Environmental Protection

A. At the request of a property owner, the Board of Adjustment may vary the requirements of ~~Section 4~~ Article 8, Natural Resource Environmental Protection Standards in accordance with the procedures of this section and Interpretations by the Board of Adjustment. In addition to the findings required in Sec. 3.15.8, ~~General Findings of Fact~~, the Board of Adjustment in granting any variance shall ~~also~~ make the following additional findings.

1. That failure to grant the variance would result in exceptional hardship to the property owner;
2. That the applicant has presented proof that alternatives to the variance have been thoroughly examined and are not practicable;
3. That the variance represents the minimum amount necessary to provide relief from the hardship in making reasonable use of the property; and
4. That the variance would not result in significant degradation of water quality, loss of significant wetlands, increase in sedimentation and erosion, increase in stormwater runoff, loss of significant plant and wildlife habitat or threats to public safety.

B. Reasonable conditions may be attached to any variation from the requirements of Article 8, Natural Resource Environmental Protection Standards in order to accomplish the purposes and objectives of the Article.

3.15.11 Appeal

Appeal from final action by the Board of Adjustment on a variance may be taken by filing a petition for *certiorari* with the Durham County Superior Court.

~~The Board may not grant a variance to allow a use which is not already permitted in the district involved.~~

~~Submittal~~

~~Application forms are available in the City-County Planning Department. Completed applications shall be submitted to the Planning Department along with information specified in the application and the filing fee. Pre-filing meetings with staff are recommended.~~

~~Notice and Hearing~~

~~The staff shall review the application to assure that it is complete. Completed applications will be scheduled for a public hearing with the Board of Adjustment. A notice of the time and place of the public hearing shall be published twice in a newspaper of general circulation in the County. The first notice shall be published not less than 10 days nor more than 25 days prior to the date of the hearing. A mailed notice indicating the time and place of the hearing and the nature of the request shall be mailed to the applicant, property owner and all property owners within 300 feet of the property under consideration. The property may also be placarded with a notice of the hearing. Addresses for notification shall be the most recent address available from the County tax abstracts.~~

~~Purpose~~

~~This Section establishes a procedure for variations from the terms of this ordinance which are still in harmony with the general purposes and intent of the ordinance. This Section also~~

1 provides a process for appeals of decisions made by administrative officials and appeals of
2 interpretations of zoning map.
3

Sec. 3.16 Appeal of Administrative Decision

3.16.1 Applicability

An appeal by any person aggrieved by a final order, interpretation or decision of the Planning Director or Inspections Director, or designees in regard to the provisions of this Ordinance may be taken to the Board of Adjustment, except as otherwise provided in this Ordinance.

3.16.2 Application Requirements

- A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Planning Director or designee and the Board of Adjustment.
- B. An application for an appeal of an administrative decision shall be filed in accordance with Sec. 3.2.4, Application Requirements.
- C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the Planning Director, or designee. The date and time of filing shall be entered on the notice.

3.16.3 Deadline for Submission of Application

An appeal of an administrative decision shall be filed with the Board of Adjustment within 30 days of receipt of the decision.

3.16.4 Notice and Public Hearings

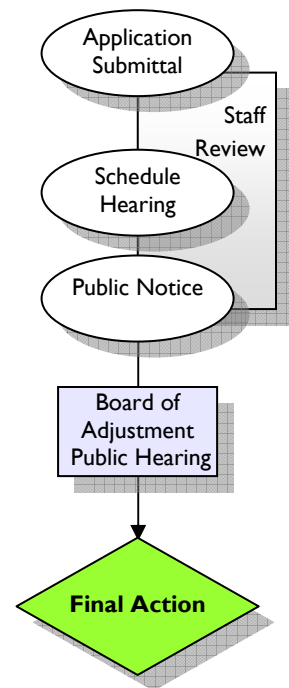
Once the application has been submitted, the Planning Director or designee shall schedule a public hearing at the first available BOA meeting and give public notice as forth in Sec. 3.2.5.

3.16.5 Action by the Planning Director

The Planning Director or designee shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

3.16.6 Action by Board of Adjustment

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- B. A motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- C. If a motion to reverse or modify is not made, or fails to receive the affirmative vote of five members necessary for adoption, then appeal shall be denied.



- 1 D. Any motion to overturn a decision shall state the reasons or findings of fact that
2 support the motion.

3 **3.16.7 Effect of Appeal**

- 4 A. An appeal shall stay all proceedings in furtherance of the action appealed, unless the
5 administrative official from whom the appeal is taken certifies to the Board of
6 Adjustment that, because of facts stated in the certificate, a stay would, in their
7 opinion, cause imminent peril to life or property or that because the violation is
8 transitory in nature a stay would seriously interfere with the effective enforcement of
9 this Ordinance. In that case, proceedings shall not be stayed except by order of the
10 Board of Adjustment or a court, issued on application of the party seeking the stay,
11 for due cause shown, after notice to the administrative official.

- 12 B. An appeal shall not stop action lawfully approved (including construction activities
13 authorized by a building permit); only actions presumed in violation of this
14 Ordinance are stayed.

15 **3.16.8 Appeal**

16 Appeal of the Board of Adjustment action under this subsection may be taken by
17 filing a petition for *certiorari* with the Durham County Superior Court.

Sec. 3.17 Historic District or Landmark Designation

3.17.1 Applicability

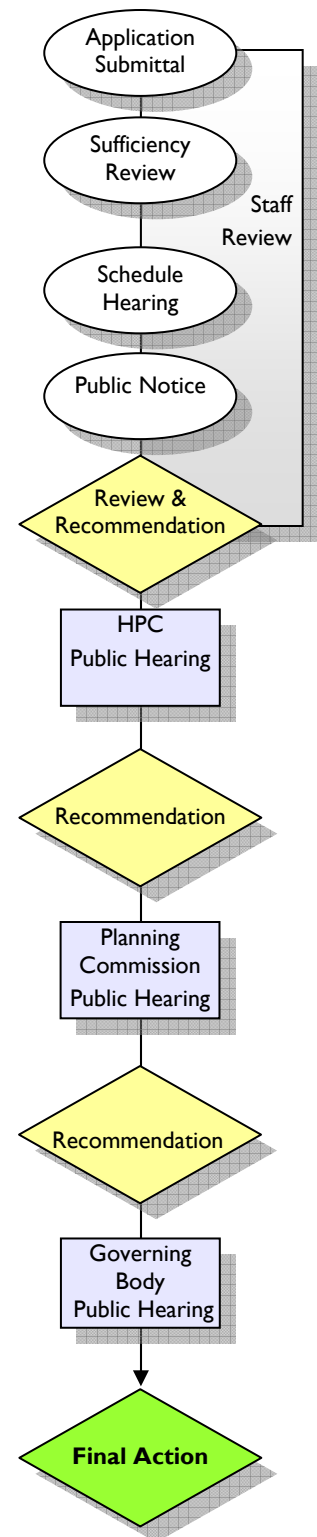
- A. The City Council and the Board of Commissioners may designate, in their respective jurisdictions, an area as an historic district or a property as an historic landmark.
- B. An area may be considered for designation as an historic district only after the HPC deems and finds that an area is of special significance in terms of its prehistorical, historical, architectural or cultural importance, and possesses integrity of design, setting, materials, feeling and association.
- C. A property owner or owners may request that a property be designated as an historic landmark

3.17.2 Initiation of Request

- A. Requests for designating an historic district may be made in any one of the following methods:
1. By petition to the appropriate governing body of more than 25% of the property owners in the proposed historic district. (Petition shall be filed with the Planning Director or designee).
 2. By initiative of the governing body Durham County for proposed historic districts in the governing body's County's zoning jurisdiction.
- B. An application for an historic landmark designation shall be submitted in accordance with Sec. 3.2.4, Application Requirements. Requests for designation shall include the specific elements of the property for which historic landmark designation is proposed.

3.17.3 Designation of an Historic District

- A. Initiation of an Historic District Preservation Plan
1. Upon the filing of a petition from a property owner or owners or upon the initiative of the City or County, the Planning Director, or designee, shall give notice in accordance with Sec. 3.2.5 that a request has been filed and ~~will~~ shall be considered by the HPC at a specified date and time.
 2. The HPC shall conduct a preliminary consideration of the request and, at this time, may make the findings indicated in Sec. 3.17.1B above. The HPC shall report its findings to the Planning Director, or designee. If the decision of the HPC is negative, the Planning Director, or designee, shall report the negative recommendation to the governing body City Council or the County Commission, as appropriate, as an informational item.



3. If the HPC finds that the proposed historic district meets the requirements of Sec. 3.17.1B above, then the Planning Director, or designee, shall prepare a Historic District Preservation Plan, in accordance with Sec. 3.17.3B below.
4. Upon the completion of the Historic Preservation Plan, the Planning Director, or designee, shall give notice in accordance with Sec. 3.2.5 that the designation of an historic district and the adoption of a Historic District Preservation Plan ~~will~~ shall be considered by the HPC at a specified date and time.

B. Historic District Preservation Plan

1. An Historic District Preservation Plan shall include an investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in the proposed historic district and a description of the boundaries of the proposed historic district, in accordance with NCGS §160A-400.4(1); principles and design review criteria (guidelines) for certificates of appropriateness as required in NCGS §160-400.9(c); and a preservation strategy tailored to the individual needs of the specific area.
2. The preservation strategy shall include, but not be limited to, the following elements:
 - a. The need for the historic district in that area, including the specific reasons why the regulatory provisions of this section should be applied in order to effectively accomplish the preservation of that area;
 - b. The means by which existence of the historic district ~~will~~ shall be publicized to historic district property owners and to the general public;
 - c. The principles, design guidelines and criteria to be followed in the historic district for exterior activities involving new construction, alteration, restoration, or rehabilitation and which shall be the basis for the HPC's review and action upon an application for a certificate of appropriateness;
 - d. The means by which technical assistance ~~will~~ shall be offered to property owners of the historic district by the HPC, City and County staff, or other groups;
 - e. A description of the various financial incentives that are proposed for use in promoting preservation activities within the historic district, how those incentives would be utilized and how property owners ~~will~~ shall be made aware of them; and
 - f. A description of what, if any, measures the HPC, the City or County staff, or other groups will take to encourage economic activity and development which will be conducive to preservation activities within the historic district.

C. Action by the NC Department of Cultural Resources

In accordance with NCGS §160A-400.4(2), the NC Department of Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.

D. Action by the Historic Preservation Commission

1. The HPC shall conduct a public hearing and give notice in accordance with Sec. 3.2.5 on the proposed historic district designation and the Historic District Preservation Plan.
2. The HPC shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend to the appropriate governing body denial of the request or designation of the area.
3. The HPC shall forward its recommendation on historic district designation to the Planning Commission and to the governing body ~~City Council or County Commission, as appropriate,~~ with a recommended Historic District Preservation Plan. Consideration of the Historic District Preservation Plan shall be part of the consideration of the historic district designation.

E. Action by the Planning Commission

1. The Planning Commission shall conduct a public hearing and give notice in accordance with Sec. 3.2.5 on the proposed historic district designation and the Historic District Preservation Plan.
2. The Planning Commission shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend denial or designation of the area.

F. Action by the Governing Body

1. The governing body ~~City Council or County Commission, as appropriate,~~ shall set a public hearing and shall notify property owners within the proposed historic district of the public hearing in accordance with the public hearing and notification provisions of Sec. 3.2.5.
2. The governing body ~~City Council or County Commission, as appropriate,~~ shall hold a public hearing to consider the request to designate the historic district and the adoption of the Historic District Preservation Plan. The protest petition procedures as established for a petition for ~~rezoning~~ zoning map change in Sec. 3.5.13 shall apply to the designation or amendment of an historic district.
3. If the governing body ~~City Council or the County Commission, as appropriate,~~ shall deny a request for designating an historic district, property owners may not initiate a new request to designate an historic district for the same area until at least one year after the governing body's action to deny the request.
4. When the governing body ~~City Council or the County Commission, as appropriate,~~ designates an area as an historic district, the Historic District Preservation Plan for the particular historic district shall become City or County policy and all appropriate public bodies or administrative officials cited as having implementation responsibilities shall be directed to use their best efforts to ~~assure~~ ensure the effective implementation of the Plan as it is written.

3.17.4 Designation of an Historic Landmark**A. Criteria for Designation**

1. A building, structure, site, area and object may be considered for designation as an historic landmark only if both of the following criteria are met:

- a. The HPC deems and finds that the building, structure, site, area or object appears individually eligible for listing or is individually listed on the National Register of Historic Places; and
 - b. The HPC deems and finds that the property is of special significance in terms of its prehistorical, historical, architectural or cultural importance, and possesses integrity of design, setting, materials, feeling and association.
2. A property shall be designated as a historic landmark only with the consent of the property owner or owners.

B. Action by the Historic Preservation Commission

1. In accordance with NCGS §160A-400.6(2), the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
2. The HPC shall hold a public hearing and give notice in accordance to Sec. 3.2.5 on the proposed ordinance of designation. It shall recommend to the governing body ~~City Council or County Commission, as appropriate,~~ denial of designation or approval of designation of the proposed historic landmark.

C. Action by the NC Department of Cultural Resources

In accordance with NCGS §160A-400.6(3), the NC Department of Cultural Resources shall be given the opportunity to review and comment upon the substance and effect of the designation of any historic landmark. Any comments shall be provided in writing. If the NC Department of Cultural Resources does not submit its comments within 30 days following receipt by the Department of the investigation and report, the HPC and the governing body are relieved of any responsibility to consider such comments.

D. Action by the Governing Body

1. The governing body ~~City Council or County Commission, as appropriate,~~ shall hold a public hearing and give notice in accordance Sec. 3.2.5 on the proposed ordinance of designation.
2. Following the public hearing, the governing body may adopt the ordinance of designation as proposed, adopt the ordinance of designation with any amendments it deems necessary, or reject the proposal.

E. Adoption of an Ordinance of Designation

Upon compliance with the required procedures of this section, the governing body ~~City Council or the County Commission~~ may, for ~~their~~ its respective jurisdiction, adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall include the following information:

1. A description of each property designated by the ordinance, including the tax map reference number for the property. The ordinance shall clearly indicate what elements of the property are designated as an historic landmark. Examples of those elements are a building's interior, its exterior, any specific or all outbuildings, other site elements or the entire site;
2. The name or names of the owner or owners of the property;

3. A description of those elements of the landmark that are integral to its educational, cultural, historical, architectural or prehistorical value;
4. The land area of the property;
5. A note that, for each building, structure, site, area or object, the waiting period set forth in Sec. 3.18.3 of this Ordinance shall be observed prior to its demolition; and
6. Any other information the HPC deems necessary.

F. Historic Markers

The ordinance designating the landmark may also provide for suitable markers on the property noting that the landmark has been so designated, including but not limited to signs, plaques or other appropriate indicators. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.

G. Action Following Designation

Upon adoption of the ordinance of designation, the following provisions shall apply:

1. The owners and occupants of each designated historic landmark shall be given written notification of such designation by the Planning Director, or designee, insofar as reasonable diligence permits.
2. One copy of the ordinance and each amendment thereto shall be filed by Planning Director, or designee, in the Office of the Register of Deeds of Durham County. Each historic landmark designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the Office of the Register of Deeds.
3. One copy of the ordinance and each amendment thereto shall be given to the Inspections Director, or designee.
4. For historic landmarks ~~in the City~~, one copy of the ordinance and each amendment thereto shall be kept on file in the Office of the City or County Clerk, as appropriate, and made available for public inspection at any reasonable time.
5. The fact that a building, structure, site, area or object has been designated as an historic landmark shall be clearly indicated on all tax maps maintained by Durham County for such period as the designation remains in effect.
6. The Planning Director, or designee, shall give notice of the adoption of an ordinance of designation and any amendment thereof to the Durham County Tax Supervisor. The designation and any recorded restriction upon the property limiting its use for preservation purposes shall be considered by the Tax Supervisor in appraising it for tax purposes.

3.17.5 Designation of a Landmark Sign

A. Procedure

The following procedure shall be used to designate signs as Landmark Signs. No sign shall be considered a Landmark Sign unless it has received that designation through this process.

~~The application for a landmark sign shall only be accepted for a limited time. Applications shall be accepted until September 30, 1998 for signs within the Durham Corporate Limits and until~~

~~September 30, 1999 for signs located in Durham County and outside the Durham Corporate Limits. No applications for a Landmark Sign designation shall be accepted after the closing date. Nonconforming signs not receiving the Landmark designation shall be removed and new signs shall conform to the requirements of the zoning ordinance.~~

~~Applications for Landmark Signs shall be made on forms available at the Planning Department. The applicant shall include documentation showing that the sign is at least 25 years old. The application shall also include specific information about the appearance of the sign in the form of renderings, photographs, models, or some other means sufficient to show the nature of the sign. The application shall also include information which describes how the sign meets the criteria listed below which shall be used to designate landmark signs.~~

1. An application for a landmark sign designation shall be submitted in accordance with Sec. 3.2.4, Application Requirements.
2. The Planning Director, or designee, shall forward the application and all supporting material to the Historic Preservation Commission.
3. The applications shall be considered by the Historic Preservation Commission. The Commission shall review the application and may designate the sign as a Landmark Sign, deny the designation, or request additional information in order to make a decision. A sign which is denied a designation shall be considered a nonconforming sign which ~~must~~ shall be removed.
4. If the sign is designated as a Landmark Sign, a copy of the application shall be submitted to the Inspections Department. After designation, the applicant shall have 60 days to bring any signs that pose a hazard into a structurally safe condition. Failure to assure that the signs are safe and do not pose a hazard shall result in loss of the Landmark Sign designation. The Inspections Department shall issue a sign permit for the sign if the sign is found to be structurally safe. Landmark Signs shall conform to all other provisions of this section not in conflict with the privileges of the landmark designation.

B. Approval Criteria

The Historic Preservation Commission may establish a schedule to review applications for Landmark Sign designations. To qualify as a Landmark Sign, the sign shall meet all of the following criteria:

~~Be at least 25 years old.~~

1. Be recognized as important to the culture or history of the jurisdiction, or possess unique characteristics, or incorporate materials or craftsmanship not commonly found in newer signs.
2. Bear a close resemblance to its appearance when it was installed.

~~Be structurally safe and well maintained.~~

3.17.6 Repeal of Historic District or Historic Landmark Designation

- A. ~~The governing body City Council or County Commission, as appropriate~~ may repeal an ordinance designating an historic district or an historic landmark. The repeal process shall be in accordance with NCGS §160A-400.6. The governing body's action to repeal an ordinance of designation shall include the reasons for the repeal and a review by the State Historic Preservation Office.
- B. When such repeal occurs, the Planning Director, or designee, shall notify the HPC and the property owner or owners. When such repeal occurs of an historic landmark

1 designation, the Planning Director, or designee, shall also notify the Register of
2 Deeds for Durham County and the Durham County Tax Supervisor.

3 **3.17.7 Appeal**

4 Appeal from a final action by the governing body on the designation of an historic
5 district or an historic landmark may be taken by filing a petition for *certiorari* with
6 the Durham County Superior Court.

7
8 ~~By initiative of the City of Durham for proposed historic districts in the City's zoning~~
9 ~~jurisdiction.~~

10 ~~The City Council or County Commission, as appropriate, may repeal an ordinance designating~~
11 ~~an historic landmark. The repeal process shall be in accordance with NCGS 160A-400.6. The~~
12 ~~governing body's action to repeal an ordinance of designation shall include the reasons for the~~
13 ~~repeal and a review by the State Historic Preservation Office.~~

14 ~~integrity of design, setting, materials, feeling and association. Required Procedures~~

15 ~~No ordinance designating an historic landmark nor any amendment thereto may be adopted,~~
16 ~~nor may any historic landmark be accepted or acquired by the City or County until the following~~
17 ~~procedural steps have been taken:~~

18 ~~The HPC shall adopt Rules of Procedure.~~

19 ~~The Commission shall prepare and adopt principles and design review guidelines for altering,~~
20 ~~restoring, moving or demolishing properties designated as landmarks.~~

21 ~~Initiation of Requests for Designating an Historic Landmark~~

22 ~~A property owner or owners may request that a property be designated as an historic landmark~~
23 ~~by application to the Durham City-County Planning Department. Requests for designation shall~~
24 ~~be made on forms provided by the Durham City-County Planning Department~~

25 ~~The City Council and the Durham Board of County Commissioners may designate, in their~~
26 ~~respective jurisdictions, one or more geographic areas as historic districts and may indicate the~~
27 ~~extent and boundaries of any such area on the Official Zoning Map for the City or County.~~

28 ~~Approval Process for Historic Districts~~

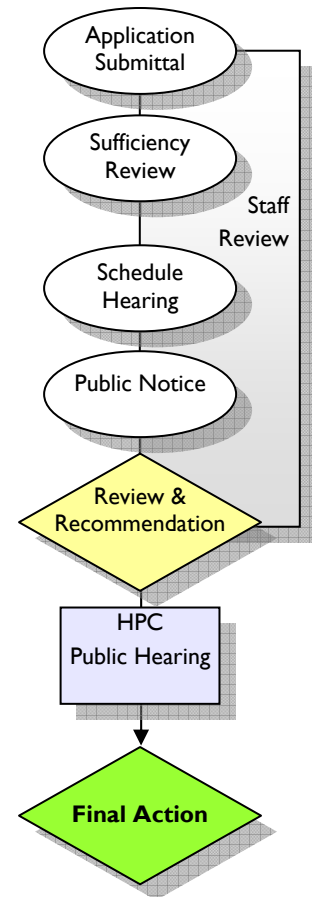
29 ~~Eligibility for Designating an Area as a Historic District~~

30 ~~An area may be considered for designation as a historic district by the Board of County~~
31 ~~Commissioners or by the Durham City Council, as appropriate, only after the Durham Historic~~
32 ~~Preservation Commission deems and finds that the area is of special significance in terms of its~~
33 ~~prehistorical, historical, architectural or cultural importance, and possesses~~

Sec. 3.18 Certificate of Appropriateness

3.18.1 Applicability

- A. From and after the designation of an historic district or historic landmark, no exterior ~~portion~~ feature or designated portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, and other appurtenant features) nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within or on such historic district or historic landmark until after an application for a certificate of appropriateness as to the exterior feature or designated portion has been submitted to and approved by the Historic Preservation Commission (HPC).
- B. The City or the County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure within or on an historic district or historic landmark for which a certificate of appropriateness has not been approved. A certificate of appropriateness shall be required whether or not a building permit is required. Any building permit or other permit not issued in conformity with this section shall be invalid. A certificate of appropriateness may be issued by the HPC subject to reasonable conditions necessary to carry out the purposes of this Ordinance.
- C. For the purposes of this section, the term "exterior feature" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. In the case of outdoor advertising signs, the term "exterior features" shall be construed to mean the style, material, size and location of all such signs. These "exterior features" may include historic signs and significant landscape, archaeological and natural features of the area.
- D. For the purposes of this section, the term "designated portion" shall mean any portion of an historic landmark that was included in the ordinance designating the landmark, including the main structure or structures, the interior or portions of the interior, any outbuildings or secondary structures, site elements and landscaping.



3.18.2 Circumstances Not Requiring Certificates of Appropriateness

- A. Nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district or on an historic landmark which does not involve a substantial change in the design, material, or outer appearance thereof, provided that any required building permit is obtained. Examples of this work shall include, but not be limited to, the following:
- Caulking or reglazing windows;
 - Minor repairs to windows, doors, siding, gutters, etc;

3. Replacement of existing mechanical equipment;
4. Repairing or repaving of flat concrete work in side and rear yards;
5. Repairing or repaving of existing street yard paving, concrete work and walkways, if the material the same or similar in appearance is used;
6. Roofing work, if no change in appearance occurs;
7. Foundation work, if no change in appearance occurs; or
8. Chimney work, if no change in appearance occurs.

B. Nor shall this Ordinance be construed to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which is determined to be a threat to the public safety. The Inspections Director, or designee, shall certify in writing to the HPC that such action is required for the public safety because of an unsafe or dangerous condition.

C. Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.

D. No certificate of appropriateness shall be required for interior changes. However, this does not excuse the property owner from obtaining required building permits for interior work.

3.18.3 Certificates of Appropriateness for Demolition, Destruction and Relocation

A. An application for a certificate of appropriateness authorizing the demolition, destruction or relocation of a structure in a designated historic district or of a designated historic landmark shall not be denied. However, the effective date of such a certificate of appropriateness may be delayed for a period of up to 365 days from the date of approval. This maximum period of delay shall be reduced by the HPC when it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such structure or landmark by virtue of the delay. During such period, the HPC may negotiate with the owner and with any other parties in an effort to find a means of preserving the structure or landmark.

B. If the HPC finds that the structure has no particular significance or value toward maintaining the character of an historic district, it shall waive all or part of such period and authorize earlier demolition or removal.

C. An application for demolition, destruction and relocation of a building, site or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such structure or landmark by virtue of the denial.

3.18.4 Master Certificates of Appropriateness

A. Work done by the City and County and by public utility companies within any historic district shall be subject to the provisions of this section. However, rather than obtaining individual certificates of appropriateness for each proposed project in an historic district, the City and County and public utility companies may instead obtain a master certificate of appropriateness from the HPC.

- 1 B. The provisions of this section that apply to certificates of appropriateness shall also
2 apply to master certificates of appropriateness. No master certificate of
3 appropriateness shall be valid for a period greater than one year from the date of
4 issuance.
- 5 C. In addition to acquiring a master certificate of appropriateness, the City and County
6 and any public utility companies shall notify the City Manager or County Manager, as
7 appropriate, prior to performing any work within any historic district. In emergency
8 situations, as determined by the Inspections Director, or designee, notification by the
9 next work day is acceptable. Such work shall be done in accordance with the
10 principles and design criteria adopted for the historic district as part of the Historic
11 District Preservation Plan. The City Manager or County Manager, as appropriate,
12 may inspect all work done pursuant to a master certificate of appropriateness.

13 3.18.5 Administrative Certificate of Appropriateness

- 14 A. With the concurrence of the chair of the HPC, the Planning Director, or designee,
15 may approve or amend certificates of appropriateness for the following activities, or
16 may refer them to the HPC for a decision:
- 17 1. Activities expressly authorized by the HPC;
18 2. Minor design changes to projects for which a certificate of appropriateness has
19 been issued by the HPC;
20 3. Increasing the expiration date of a certificate of appropriateness for an
21 additional period not to exceed six months; or
22 4. Anything not specifically covered by this section that the Planning Director, or
23 designee, determines is not so significant as to impair or affect historic,
24 architectural, or aesthetic character.
- 25 B. Such an application shall be considered by the Planning Director, or designee, as
26 soon as possible, but not later than 15 days following receipt of a completed
27 application form accompanied by all required information and documents.
- 28 C. A public hearing or public notice shall not be required unless the application is
29 referred to the HPC. Applications referred to the HPC by the Planning Director, or
30 designee, shall be considered within 30 days following receipt of the completed
31 application form accompanied by all required information and documents.

32 3.18.6 Application Requirements

- 33 A. An application for a certificate of appropriateness shall be submitted in accordance
34 with Sec. 3.2.4, Application Requirements.
- 35 B. An applicant may file with the application any additional relevant information
36 bearing on the application.

37 3.18.7 Notification of Affected Property Owners

38 Prior to the issuance or denial of a certificate of appropriateness, the Planning
39 Director, or designee, shall take such action as may be reasonable to inform the
40 owner of any property likely to be materially affected by the application.

3.18.8 Notification of the Commission

The Planning Director, or designee, shall notify the members of the HPC at least seven calendar days before its regularly scheduled meeting of any pending applications for certificates of appropriateness.

3.18.9 Action by the Historic Preservation Commission

- A. The HPC shall consider an application for a certificate of appropriateness as soon as reasonably possible, but shall consider all applications within at least 60 calendar days of the date of the application, unless a deferral is granted in accordance with Sec. 3.18.12 below, Deferral of Application.
- B. In cases where the HPC deems it necessary, it may hold a public hearing concerning the application.
- C. As part of its review procedure, the HPC may view the premises and seek the advice of the North Carolina Department of Cultural Resources or other expert advice as it may deem necessary under the circumstances.
- D. The HPC shall approve, approve with modifications or conditions, or disapprove an application for a certificate of appropriateness or master certificate of appropriateness.
- E. Prior to final action on an application for a certificate of appropriateness in an historic district, the HPC, using the principles and design review criteria adopted pursuant to Sec. 3.17.3B, Requirements for Historic District Preservation Plan, shall make findings of fact indicating the extent to which the application is or is not consistent with the historic character and qualities of the historic district.
- F. Prior to final action on an application for a certificate of appropriateness for an historic landmark, the HPC, using the principles and design review criteria adopted pursuant to Sec. 3.17, Historic District or Landmark Designation, shall make findings of fact indicating the extent to which the application is or is not consistent with the principles and design review criteria.
- G. The HPC may not deny a certificate of appropriateness for demolition (see Sec. 3.18.3, Certificate of Appropriateness for Demolition, Destruction and Relocation).

3.18.10 Approval Criteria for Historic Districts

- A. For historic districts, the intent of these regulations is to ensure ~~insure~~, insofar as possible, that buildings or structures in the historic district shall be in harmony with other building or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or to prohibit the demolition or removal of such buildings or to impose architectural styles from particular historic periods. In considering new construction, the HPC shall encourage contemporary design which is harmonious with the character of the historic district.
- B. In granting a certificate of appropriateness, the HPC shall take into account, in accordance with the principles and design review criteria of the Historic Preservation Plan adopted for the historic district:
 - 1. The historic or architectural significance of the structure under consideration in relation to the historic value of the district;

2. The exterior form and appearance of any proposed additions or modifications to that structure; and
3. The effect of such additions or modifications upon other structures in the vicinity.

3.18.11 Approval Criteria for Historic Landmarks

- A. In granting a certificate of appropriateness, the HPC shall take into account in accordance with the principles and design review criteria adopted for historic landmarks:
 1. The historic or architectural significance of the structure, site or setting under consideration; and
 2. The exterior form and appearance of any proposed additions or modifications to the structure, site or setting.
- B. The intent of these regulations is to ensure ~~insure~~, insofar as possible, that changes to buildings or structures designated as historic landmarks shall be in harmony with the historic character that was cited as the reasons for designation.

3.18.12 Deferral of Application

- A. An applicant for a certificate of appropriateness may request that the HPC's consideration of the application be deferred to a specific date.
- B. Upon such request, the Planning Director, or designee, shall have the authority to grant the deferral.
- C. A request for ~~deferral continuance~~ shall be made in writing to the Planning Director, or designee, at least ten days prior to the scheduled consideration of the application and shall indicate the date to which the deferral is requested and the reasons for the deferral. Only one deferral shall be permitted for each application.

3.18.13 Time Limits

If the HPC fails to take final action upon any application within 60 days after the complete application is submitted to the Planning Director, or designee, the application shall be deemed to be approved, unless a deferral is granted in accordance with the provisions of Sec. 3.18.12 above, Deferral of Application. If such a deferral is requested, the 60-day time period shall be increased by the amount of time for which a deferral is requested. A certificate of appropriateness shall expire if a building permit has not been obtained within one year.

3.18.14 Submission of New Application

If the HPC denies an application for a certificate of appropriateness, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration, moving or demolition, or if conditions related to the historic district or historic landmark or surrounding uses have changed substantially.

3.18.15 Local and State Coordination

The HPC shall use all reasonable efforts to expedite any concurrent process with the North Carolina Department of Cultural Resources if such a process is desired by the

applicant for the purpose of securing both a certificate of appropriateness and a Federal historic preservation tax credit.

3.18.16 Specific Enforcement

A. Compliance with the terms of a certificate of appropriateness shall be enforced by the Inspections Director, or designee. Construction or other work which fails to comply with a certificate of appropriateness shall be a violation of this Ordinance. The discontinuance of work for a period of six months shall be considered a failure to comply with a certificate of appropriateness.

B. Nothing contained in this ~~ordinance~~ section shall prohibit, impair or limit in any way the power of the City or County to prevent the construction, reconstruction, alteration, restoration or removal of buildings, structures, appurtenant fixtures or outdoor signs in the historic district in violation of the provisions of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

3.18.17 Appeal

Final action on a certificate of appropriateness by the HPC may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

~~An appeal of a decision of the Commission in granting or denying any Certificate of Appropriateness may be taken to the Durham Board of Adjustment. Appeals may be taken by any aggrieved party, shall be taken within times prescribed by the Commission in its Rules of Procedure and shall be in the nature of certiorari (only evidence presented at the Commission's meeting shall be considered at the appeal). An appeal from the City or County Board of Adjustment's decision in any case shall be heard by the Durham County Superior Court. The HPC shall cause to be entered into the minutes of its meeting the reasons for its actions, whether it be approval, approval with modification or conditions or denial. The HPC shall take action on the application and in doing so shall apply the principles and design review criteria, referred to in to Section 3.17.3B, Requirements for Historic District Preservation Plan and Section 0, Required Procedures, as appropriate.~~

~~Submittal~~

~~A property owner or his or her agent may file an application for a Certificate of Appropriateness with the Durham City-County Planning Department.~~

~~Content of Application~~

~~The Commission shall, by uniform rule in its Rules of Procedure, require such data and information as is reasonably necessary to evaluate the nature of the application. An application for a Certificate of Appropriateness shall not be considered complete until all required information has been submitted.~~

~~Certificates of Appropriateness for Historic Landmarks~~

~~From and after the designation of an historic landmark, no designated portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, and other appurtenant features) nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such historic landmark until after an application for a Certificate of Appropriateness has been submitted to and approved by the Commission.~~

~~The City of Durham and Durham County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure designated as an historic landmark for which a Certificate of Appropriateness has not been approved. A Certificate of Appropriateness shall be required whether or not a building permit is required.~~

1 ~~Any building permit or other permit not issued in conformity with this Section shall be invalid.~~
2 ~~A Certificate of Appropriateness may be issued by the Commission subject to reasonable~~
3 ~~conditions necessary to carry out the purposes of this ordinance.~~

4 ~~Where the exterior of a building or structure is designated as an historic landmark, the term~~
5 ~~"exterior" shall mean the architectural style, general design, and general arrangement of the~~
6 ~~exterior of a building or other structure, including the kind and texture of the building material,~~
7 ~~the size and scale of the building, and the type and style of all windows, doors, light fixtures,~~
8 ~~signs and other appurtenant features. In the case of outdoor advertising signs, the term~~
9 ~~"exterior" shall be construed to mean the style, material, size and location of all such signs. Such~~
10 ~~"exterior" features may include but shall not be limited to historic signs, significant landscapes,~~
11 ~~and archaeological and natural features of the area.~~
12

Sec. 3.19 Demolition by Neglect (City Only)

3.19.1 Applicability

Owners of certain historic properties are required to maintain their properties and not allow them to fall into disrepair. The requirements of this subsection are applicable only to certain properties, termed "historic properties" in this subsection. That term as used in this subsection is defined to include designated historic landmarks and properties identified as "contributing" or "pivotal" in designated historic districts.

A. Conditions of Neglect Defined and Prohibited

Owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur on such properties. Conditions of neglect are as defined below. It ~~shall be is~~ a violation of this ~~zoning~~ Ordinance to not remedy a condition of neglect within the period of time set by a final administrative determination, as described in subsequent subsections of this Ordinance. Conditions of neglect include the following:

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration or crumbling of exterior plasters or mortars.
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
6. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
7. Rotting, holes, and other forms of decay.
8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
10. Deterioration of fences, gates, and accessory structures.
11. Deterioration that has a detrimental effect on the surrounding historic district, or on the special character of the historic landmark.
12. Deterioration that contributes to a hazardous or unsafe condition.

3.19.2 Process and Administration

A. Director Investigation and Determination

1. Initiation by Petition

The initial determination that there is a condition of neglect ~~is~~ shall be made by the Planning Director, or designee, of Planning after an investigation that is

initiated by a petition from any person who is familiar with the subject property, which may include but not be limited to a City ~~or County~~ employee.

2. Notice of Investigation

On receipt of a petition, the Director, or designee, ~~his/her designee~~ shall notify the owners in writing of the allegation and the process for making a decision regarding the petition, including any applicable deadlines. Among other things, the notice shall offer the owner the opportunity to meet in person with the Director, or designee, and to present any relevant information. Notice shall be delivered by personal service, or by certified or registered mail, return receipt requested. If certified mail is refused or unclaimed, notice may be delivered by first class mail, and shall be considered effective if such mail is not returned by the post office within 15 days of mailing. In the case of notice by first class mail, notice shall also be posted on the property. Notice of the investigation may also be given to the owners of nearby or adjacent properties or neighborhood associations.

3. Responsibilities of Director/~~Designee~~

The Planning Director or designee ~~or Director's designee~~ shall:

- a. Investigate the allegation that a condition of neglect exists;
- b. Hold one or more meetings at a time to be set by the Director, or designee, in which the owner, other persons who have received notice, or other interested persons may give information;
- c. Issue a written determination, supported by findings of fact, regarding the allegation within 45 days of the owner's receipt of notice;
- d. Include within the determination a time period for correcting the condition of neglect, if a condition of neglect has been found;
- e. Retain all information presented by the owner or other persons;
- f. Deliver the written determination through any of the means for delivery of notice, as described above;
- g. Designate the written determination as a final administrative determination with the right of appeal to the HPC; and
- h. Include information regarding rights to a *de novo* hearing before the HPC.

B. Suspension of Process

The above process may be suspended in the event the owner agrees in writing to correct the alleged condition of neglect within a time period determined to be reasonable by the Director, or designee. If the condition is not corrected within that time period, the process shall continue where it was suspended.

C. Appeal of Director's Determination ~~De Novo Quasi-Judicial Hearing Before HPC~~

If the property owner disagrees with the Director's determination, the owner may appeal and may request a *de novo* hearing before the HPC. The request ~~must~~ shall be delivered to the Planning Department, in writing, within 30 days of receipt of the Director's determination. The HPC shall hold a quasi-judicial hearing on the issue of whether demolition by neglect is occurring on the property. Procedures that would be followed by the Board of Adjustment (BOA) in a quasi-judicial proceeding shall be used. The Director's determination shall be considered an administrative

determination, which has been appealed to the HPC, as the designated Planning Agency under GS 160A-388 or 153A-321 and all procedures applicable to the Board of Adjustment in GS 160A-388 and GS 153A-345 shall apply to such hearings. The HPC's determination to overturn the administrative determination ~~must~~ shall be passed by the standards established in Sec. 2.4.5 of this Ordinance. The HPC's written decision shall include findings of fact and conclusions regarding demolition by neglect consistent with this subsection. It shall be delivered to the appealing party by certified mail, return receipt requested. Appeal to the Courts may be had by *certiorari* as is provided for an appeal of a Board of Adjustment decision. If the decision is not appealed it shall be considered a final decision subject to enforcement with no rights of appeal.

D. Safeguards from Undue Economic Hardship

1. Right of Claim of ~~Process for Determining Undue~~ Economic Hardship

The property owner is entitled to make a claim of undue economic hardship if the owner is unable to make needed repairs to the property because it is economically unfeasible.

2. Issuance of Stay for Economic Hardship in Event No Hearing is Requested

In the event that the owner and/or other parties in interest do not wish to contest the determination regarding the condition of neglect, but do wish to petition for a claim of undue economic hardship, the Director's order shall be stayed until after the HPC's determination regarding the claim ~~in accordance with the procedures of paragraph 3.19.2C.~~

3. Process

If a claim of undue economic hardship is made, the Director or his designee shall receive all information from the property owners that the HPC is entitled to receive pursuant to this Ordinance, make a determination regarding whether there is undue economic hardship, and develop a plan for dealing with such hardship, if it is found to exist. The recommendation and plan shall be sent to the owner, certified mail, return receipt requested, with notice of the owner's rights to appeal to the HPC within 30 days of receipt. If the owner disagrees with the recommendation and plan the owner may request a hearing before the HPC. In the event of such a request, the hearing shall be a quasi-judicial hearing, in the nature of a BOA hearing and the decision shall be in writing, supported by findings and conclusions. The Director's determination as to economic hardship and the plan for dealing with that hardship shall be considered a final administrative determination, and any HPC decision altering such recommendation or plan ~~must~~ shall be passed consistent with the requirements of Sec. 2.4 of this Ordinance.

4. Evidence Regarding Undue Economic Hardship

When a claim of undue economic hardship is made owing to the effects of this Article, the owner and/or parties in interest shall, where reasonably possible, ~~to~~ provide the evidence below, describing the circumstances of hardship, and any additional evidence requested by the Director, or designee, or HPC or evidence the owner considers relevant.

- a. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.

- b. Financial resources of the owner and/or parties in interest.
- c. Cost of repairs.
- d. Assessed value of the land and improvements.
- e. Real estate taxes for the previous two years.
- f. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
- g. Annual debt service, if any, for previous two years.
- h. Any listing of the property for sale or rent, price asked, and offers received, if any.
- i. Annual gross income, if any, from the property for the previous two years.
- j. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
- k. Annual cash flow, if any, for the previous two years.

5. Plan to Relieve Economic Hardship

A recommended plan to relieve the economic hardship may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the City, the County, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this Article sufficient to mitigate the undue economic hardship. The Director, or designee, shall issue an order regarding the time period during which the property should be repaired, taking into account the provisions of the recommended plan.

E. Other City ~~or County~~ Powers; City's ~~or County's~~ Election of Remedies

Nothing contained within this Article shall diminish the City's ~~or County's~~ power to declare a building unsafe or in violation of the minimum housing code or any other applicable statute or code. In addition, the procedures described herein are mandatory only for determinations being made solely under the authority of this section. Where other sections of the City ~~or County~~ Code apply, the City governing body may, in its discretion, choose to process any action regarding the property under such other provisions alone, or under such provisions along with these provisions concurrently, or solely under these provisions. The City governing body may also suspend the procedures of this section at any time if an action has been initiated under other applicable law.

F. Penalties and Remedies

Enforcement of this Article may be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

1. Equitable Remedy

The City governing body may apply for any appropriate equitable remedy to enforce the provisions of this Article.

2. Order of Abatement

The ~~City governing body~~ may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this Article. Whenever the party is cited for contempt by the court and the City ~~or County~~ has executed the order of abatement, the City ~~or County~~ shall have a lien on the property for the cost of executing the order of abatement.

3. Civil Penalty

Civil penalties may be assessed for failure to comply with a final administrative determination or an un-appealed HPC decision under the provisions and guidelines for assessing such penalties for zoning code violations. Prior to imposing a civil penalty the City-County Planning Department shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for the violation indicating the nature of the violation and ordering corrective action. Where the violation is the failure to remedy a condition of neglect within the time periods provided by the Director, or designee, or the HPC no additional time period for compliance need be given. The notice shall include information regarding the possible assessment of civil penalties and other possible enforcement actions. If this notice is appealed to the Board of Adjustment, the Board shall not rehear any issue that was heard by the HPC or could have been so heard had an appeal to the HPC been made. Rather, the Board of Adjustment shall limit the scope of its review to whether there has been compliance with the Director's determination or the HPC's determination, as applicable.

Sec. 3.20 Text Amendment

3.20.1 Applicability

- A. The governing bodies shall consider amendments to the text of this Ordinance, as may be required from time to time.
- B. Amendments to the text of this Ordinance shall be made in accordance with the provisions of this section.
- C. A request to amend the text of this Ordinance may be initiated by the governing body, the Board of Adjustment, the Planning Commission, the Planning Director, or designee, or a citizen.

3.20.2 Action by the Planning Director

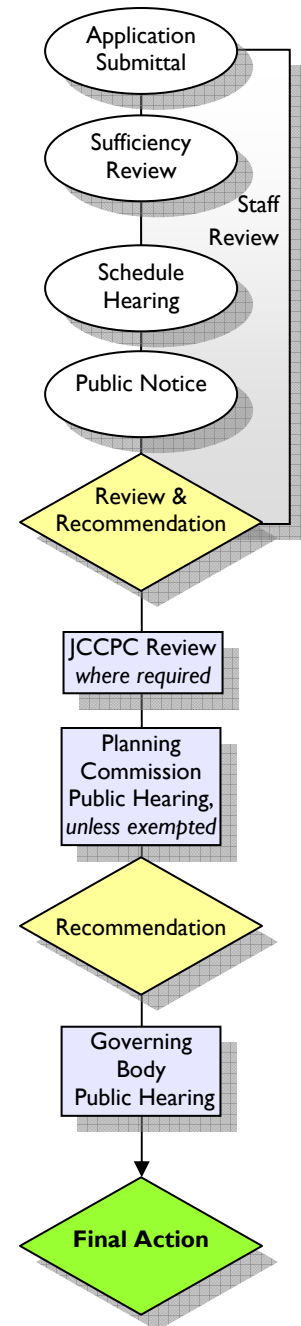
- A. The Planning Director, or designee, shall be responsible for review and recommendation regarding amendments to the text of this Ordinance that affect only City or County jurisdictions.
- B. When a text amendment is initiated by the governing body, the Board of Adjustment, or the Planning Commission, the Planning Director, or designee, in consultation with the appropriate body, shall draft an appropriate ordinance and present that ordinance to the Planning Commission so that a public hearing may be set. Except that, in the City, text amendments to establish a moratorium do not require a hearing by the Planning Commission and may proceed directly to City Council for action.
- C. The Planning Director, or designee, shall prepare a staff report that reviews the proposed text amendment request in light of any applicable plans and the general requirements of this Ordinance.

3.20.3 JCCPC Review (Where Required)

The JCCPC shall be responsible for review and direction regarding amendments to the text of this Ordinance that affect both the City and County jurisdictions prior to review by the Planning Commission.

3.20.4 Action by the Planning Commission

- A. General Procedures
 1. Before making any recommendation on a text amendment, the Planning Commission shall consider any recommendations from the Planning Director, or designee, and shall conduct a public hearing where interested parties may be heard.
 2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5.
 3. The Commission shall make its recommendation within 90 days of its initial public hearing unless the text amendment is granted expedited status.



1 4. When a recommendation is not made within the time periods established in this
2 section, the governing body may process the request without a Commission
3 recommendation.

4 5. In no event may the governing body hearing occur less than 30 days after the
5 Commission has received the request for the expedited hearing.

6 **B. Changed Application**

7 If the applicant makes significant changes to the application for a text amendment
8 after the Commission has made its recommendation, the Planning Director, or
9 designee, may refer the modified request back to the Commission for an additional
10 public hearing.

11 **C. Expedited Hearing**

12 1. If the governing body has set an expedited hearing concerning a request, in
13 accordance with Sec. 3.20.5B, a public hearing before the Commission shall be
14 held at the first available hearing date or prior to the hearing before the
15 governing body.

16 2. The Commission shall make a recommendation based on the approval criteria
17 in Sec. **Error! Reference source not found.**

18 3. The Planning Commission may not continue a request that is subject to an
19 expedited public hearing.

20 **3.20.5 Action by Governing Body**

21 **A. General Procedures**

22 ~~If the proposed text amendment has application in both the City and the County, then it shall~~
23 ~~require approval of both governing bodies, otherwise only approval by the governing body of the~~
24 ~~affected jurisdiction shall be required.~~

25 1. Before taking action on a text amendment, the governing body shall consider
26 the recommendations of the Planning Commission and Planning Director, or
27 designee, and shall conduct a public hearing.

28 2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5.

29 3. Following the public hearing, the governing body may approve the amendment,
30 deny the amendment, or send the amendment back to the Planning
31 Commission or a committee of the governing body for additional consideration.

32 4. Text amendments, if approved, shall only have applicability within the
33 jurisdiction of the governing body that approved the change.

34 **B. Expedited Hearing**

35 1. The governing body, in situations in which it determines certain standards have
36 been met, may expedite the hearing process on a proposed or prospective
37 amendment.

38 2. The governing body may consider a written request requesting an expedited
39 hearing process. The request shall identify and support the reasons for such
40 expedited consideration.

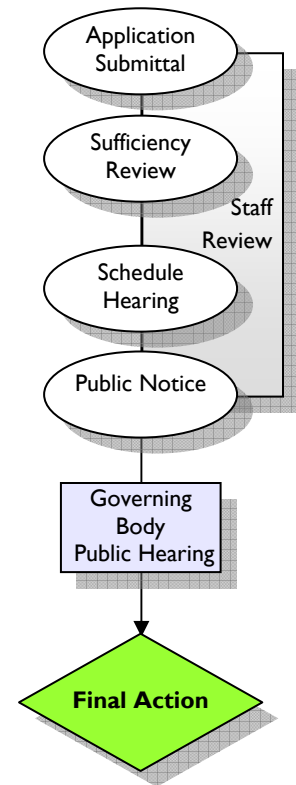
41 3. In order to grant the request, the governing body shall find that at least one of
42 the criteria below have been met:

- 1 a. Deadlines set by the local, State or Federal government for receipt of
2 application for needed funding, designation or other regulations
3 concerning the property make expedited consideration necessary;
4 b. The prospective text amendment results from an emergency beyond the
5 control of the applicant, such as response to a disaster;
6 c. The prospective text amendment addresses an urgent matter of public
7 health or safety; or
8 d. The prospective text amendment addresses issues raised in threatened,
9 actual, or potential litigation against the jurisdiction that made expedited
10 consideration necessary.
11

Sec. 3.21 Statutory Vested Rights Determination

3.21.1 Applicability

- A. This section establishes a procedure for obtaining a statutory vested right in conformance with NCGS §153A-344.1 and NCGS §160A-385.1.
- B. New or amended zoning regulations shall not apply to a property with an established vested right until the vested right expires or is terminated.
- C. A vested right may be established upon approval of a "site specific development plan." In order to qualify as a "site specific development plan," a plan ~~must~~ shall meet the requirements ~~for of this ordinance for, and undergo a site plan review in accordance with Sec. 3.7, Site Plan Review, and must shall receive either City Council County Commission governing body approval in accordance with the procedures of this section given below.~~
- D. A vested right may also be established for multi-phased development projects zoned with a development plan prior to the effective date of this Ordinance, or portions of such projects, that make a substantially complete application for vested rights within two years of the effective date of this Ordinance.



3.21.2 Application Requirements

- A. An application for vested rights determination shall be submitted in accordance with Sec. 3.2.4, Application Requirements.
- B. Applications shall include, at a minimum, the following information in addition to the standard information required pursuant to Sec. 3.2.4:
1. Information on the proposed uses of the property that the applicant wishes to vest;
 2. The length of time for which vesting is requested;
 3. A listing of those provisions of this Ordinance from which vesting is requested;
 4. For projects zoned with a development plan, all information required under this Ordinance for a development plan; and
 5. For multi-phased projects zoned with a development plan seeking vesting for unbuilt phases of the development, the following additional information shall be required:
 - a. Identification of the portions of the development plan for which vesting is requested;
 - b. Indication of the impact on the ability of the project to proceed as originally approved if vesting is not granted; and,
 - c. The proposed timetable for the construction of the phases of the project for which vesting is requested.

d. If the owner considers prior expenditures and economic impact to be relevant to the governing bodies determination, then any economic information regarding expenditures shall be accompanied by information regarding benefits or profits realized resulting from phases of the development previously built.

C. Landowners seeking zoning vested rights on plats, special use permit applications, ~~minor site plans~~, or other plans that would not normally receive ~~major~~ site plan approval, may apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans as required for a completed site plan application and an additional fee for a vested rights public hearing.

3.21.3 Action by the Planning Director

Once the application has been determined complete, the Planning Director, or designee, shall schedule a public hearing, give public notice as set forth in Sec. 3.2.5, and forward a copy of the application with all related materials to the appropriate governing body.

3.21.4 Action by the Governing Body

A. The governing body may hold the vested rights public hearing at the same time that the site plan is considered for approval.

B. Approval by the governing body shall confer upon the owner of the property a zoning "vested right" as defined in NCGS §160A-385.1 and NCGS §153A-344.1, effective on the date of approval. The governing body ~~City or County~~ may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.

~~Site specific development plans shall be valid for 24 months after the date of approval.~~

3.21.5 Effect of Zoning Vested Rights

A. Following approval or conditional approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

B. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or with ~~the zoning~~ this Ordinance.

C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under NCGS §160A-385.1. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the City or County. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.

D. A zoning vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

3.21.6 Duration

- A. ~~A zoning right that has been vested as provided in this section shall remain vested for a period of 24 months. This vesting shall not be automatically extended by any amendment or modification to a site specific development plan.~~ A zoning right that has been vested as provided in this section shall remain vested for the period specified by the governing body, which shall be a minimum of two years but no more than five years from the date of the vested rights determination. The expiration and validity of site plans and plats issued pursuant to the vested rights determination that extend beyond the vesting period shall be governed by the provisions of this ordinance. Substantial amendments and modifications to an approved site specific development plan shall not be accorded "vested rights" unless such changes are processed as a new "site specific development plan." Each approved site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NCGS §160A-385.1 or NCGS §153A-344.1. Unless terminated at an earlier date, the zoning vested rights shall be valid until (Insert date)."
- B. A building permit shall not expire or be revoked because of the passage ~~running~~ of time while a zoning vested right under this section is outstanding.
- C. A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to portions of the development that do not have approved and continuously valid site plans and preliminary plats, or buildings and uses for which no valid building permit applications have been filed.

3.21.7 Termination

- A zoning vested right as provided in this section shall terminate when any one of the following circumstances apply:
- A. At the end of the applicable vesting period;
- B. With the written consent of the affected landowner;
- C. Upon findings by the governing body by ordinance and after public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- D. Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest;
- E. Upon findings by the governing body by ordinance and after public hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the governing body of the site specific development plan; or
- F. Upon the enactment of a State or Federal law or regulation or local ordinances enacted in compliance with such laws or regulations that precludes development as contemplated in the site specific development plan.

3.21.8 Annexation

- A. Property that is annexed shall retain any vested rights throughout the original vesting period subject to the limitations of paragraph B below.

- 1 **B.** A property owner petitioning for annexation shall submit a signed statement
2 declaring any existing vested right with respect to the properties subject to
3 annexation, if the owner wishes to maintain the vested right. The failure to sign such
4 a statement shall terminate any such vested right.

5 **3.21.9 Limitations**

6 Nothing in this section shall be deemed to create any vested rights other than those
7 established under NCGS §160A-385.1 or NCGS §153A-344.1. In the event that either
8 NCGS §160A-385.1 or NCGS §153A-344.1 is repealed, the provisions of this section
9 are no longer effective to the jurisdiction involved.

10
11 ~~Establishment of a Zoning Vested Right~~

12 ~~Application forms for a vested rights hearing are available at the City County Planning~~
13 ~~Department. Schedules indicating filing dates will be developed each year and made available to~~
14 ~~the public. A fee, as specified in the application, shall be charged to cover the expenses in~~
15 ~~conducting the vested rights hearing and providing notice. A notice of the time and place of such~~
16 ~~hearings shall be published in a paper of general circulation for two successive calendar weeks.~~
17 ~~The City County Planning Department shall notify the applicant, the owner of the property, and~~
18 ~~all owners of property adjacent to or directly opposite the street from the subject property by~~
19 ~~first class mail of the time and place of the public hearing. Owners who shall receive notice and~~
20 ~~the addresses to which notices are sent shall be as shown on the County tax abstracts. Any~~
21 ~~defective notification shall not invalidate the application for vested rights. Those landowners~~
22 ~~seeking to implement the provisions of NCGS 160A-385.1 or NCGS 153A-344.1 establishing~~

1 Proposed development review

2 All proposed developments within the jurisdiction of Durham County shall be subject to this
3 ordinance and shall be reviewed by the stormwater administrator, or his designee, for
4 conformance with this article, Subchapter 2B of Title 15A of the North Carolina Administrative
5 Code and G.S. ch. 143, art. 21, where the development:

6 Disturbs greater than one acre of land in order to establish, expand, or modify a single family or
7 duplex residential development or a recreational facility;

8 Disturbs greater than one half acre of land in order to establish, expand, or modify a multifamily
9 residential development or a commercial, industrial, or institutional facility; or

10 Includes a stormwater collection system.

11 Proposed developments consisting solely of agriculture, mining, or forestry activities shall not
12 be subject to review.

13 Permit Requirements

14 No person shall undertake any development subject to this article without first obtaining a
15 permit therefor from the stormwater administrator, or their designee. Permits must be
16 maintained for the life of the development and shall be renewed every ten years from the date
17 the initial permit was issued.

18 A stormwater permit may be obtained upon submitting the fee, zoning compliance checkoff
19 issued by the Durham City-County Planning Department, if required, statement of financial
20 responsibility and ownership, development plan, and the stormwater control plan. A proposed
21 development affecting riparian buffer areas, as detailed in 15A N.C.A.C. 2B.0233, shall also be
22 accompanied by proof that it has been approved by the Division of Water Quality of the North
23 Carolina Department of the Environment and Natural Resources.

24 The applicant shall submit three copies of the permit application, including the control plan, to
25 the stormwater administrator, or their designee, at least 30 days prior to commencement of the
26 proposed development. The stormwater administrator, or their designee, shall review permit
27 applications for developments and, within 30 calendar days of receipt thereof, shall notify the
28 person submitting the application that it has been approved, approved with modifications, or
29 disapproved. If the permit application is disapproved the reasons for this action will be stated
30 with particularity in writing.

31 No permit shall be issued until such time as the stormwater administrator, or their designee is
32 assured that the proposed development will be carried out in accordance with this article and
33 the approved stormwater control plan.

34 Improvement security. The stormwater administrator, or their designee, shall require security to
35 assure performance of the continuing conditions of the permit. The applicant shall be required
36 to file an improvement security in the form of a performance bond approved by the county
37 attorney. The amount shall be deemed sufficient by the stormwater administrator, or their
38 designee, to cover all costs of constructing and maintaining, for a period of ten years, the
39 stormwater control measures required by the permit for conformity with the standards specified
40 in this article. This bond must be renewed every ten years, contemporaneous with the renewal of
41 the permit. At the time of renewal the amount of the bond shall be revised to reflect any increase
42 in the costs of construction or maintenance and shall be in the amount specified by the
43 stormwater administrator, or their designee. Forfeiture of the improvement security shall not
44 release the person conducting the land disturbing activity of their obligation to install and
45 maintain necessary stormwater control measures, to stabilize the site, or any other obligation of
46 this article, the Act, or any rule or order promulgated in furtherance thereof.

47 Plan Submission Procedures

48 A stormwater measures control plan shall be prepared for all land disturbing activities subject
49 to this article, as defined in section 14-154.

50 The stormwater administrator's office will review each complete plan submitted to it and within
51 30 days of receipt thereof will notify the person submitting the plan that it has been approved,
52 approved with modifications, approved with performance reservations or disapproved. Failure

to approve or disapprove a stormwater control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan shall specifically state in writing the reasons for disapproval. The stormwater administrator, or their designee, shall approve, approve with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved. Plans for which no permit has been issued shall expire one year from the approval date. One copy of the approved plan shall be kept on file at the job site. After approving the plan, if the stormwater administrator, or their designee, upon inspection of the job site, determines that the measures will not be effective, the stormwater administrator, or their designee, may require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue only under conditions outlined by the stormwater administrator, or their designee.

The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the stormwater administrator, or their designee, on request.

Stormwater control plans shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, or registered architect.

Appeals

Plan and Permit Denials

The disapproval or modification of any proposed stormwater control plan or the refusal to issue a stormwater permit by the stormwater administrator, or their designee, shall entitle the person submitting the plan, or applying for the permit, to a hearing before the county engineer if such person submits written demand to the County Engineer for a hearing within 15 days after receipt of written notice of disapproval or modifications. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. Such hearing will be held within 21 days after the date of the appeal or request for a hearing, or at such later time as the parties mutually agree.

Civil Penalties

Any person so assessed shall have a right of appeal to the board of County Commissioners upon serving written notice of appeal on the clerk to the Commission within 15 days after the assessed person receives notice of the assessment. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. The board of County Commissioners shall hold a quasi-judicial hearing and may affirm, increase, reduce or remit the penalty initially assessed by the County Engineer. Appeals from the final decision of the board of County Commissioners shall be to the appropriate division of the general court of justice.

Injunctive Relief

Whenever there is reasonable cause to believe that any person is violating or threatening to violate this ordinance or any rule or order adopted or issued pursuant to the Act, this ordinance, or any term, condition or provision of an approved stormwater control plan, the county attorney may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the local government for injunctive relief as provided in section 1-6 of this Code, above, to restrain the violation or threatened violation, or to obtain mandatory relief, in superior court.

The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this article, or the Act.

Vested Rights

~~Development having an established vested right in accordance with Sec. 3.21, Vested Rights may be constructed in accordance with the approved vested right site plans.~~

Approved Plans

~~Development projects:~~

~~That have an approved and continuously valid preliminary subdivision plat, final subdivision plat, site plan, or special use permit; and planting plan, development plan, Planned Density Residential (PDR) plan, use permit~~

~~For which a substantial expenditure of resources (such as time, labor or money) has been made based on the above-described approved plan may be constructed in accordance with those approved plans.~~

~~For the purposes of this section, substantial expenditure of resources shall be considered to be:~~

~~The market value of time and labor; and/or~~

~~Monetary expenditures equal to or greater than ten (10) percent of the pre-development assessed value of the land on which the development is proposed.~~

Process

~~The City Director of Inspections, and the Planning Director, or designee, shall examine any evidence of expenditures and assessed value, and shall determine whether it meets the criteria indicated above.~~

~~Any additions, expansions or phases that deviate significantly from the approved plans indicated above shall be subject to the regulations in this Section 5.5 Watershed Protection Districts. The Planning Director or designee shall make the determination as to whether any deviation from one of these previously approved plans shall be considered to be significant.~~

County Jurisdiction

~~The Board of County Commissioners, upon recommendation from the Directors of Inspections and Planning, shall examine any evidence of expenditures and assessed value, and shall determine whether it meets the criteria indicated above.~~

~~Any additions, expansions or phases that deviate significantly from the approved plans indicated above shall be subject to the regulations in this Section. The Board of County Commissioners, upon recommendation from the Planning Director, shall make the determination as to whether any deviation from one of these previously approved plans shall be considered to be significant.~~

City Jurisdiction